

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Original

77-1459

To be argued by
ARTHUR S. FRIEDMAN

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

IRVING GOLDMAN,

Defendant-Appellant.

*From an Order of the United States District Court for the
Southern District of New York.*

APPENDIX FOR APPELLANT

Volume I, pp. 1a - 342a

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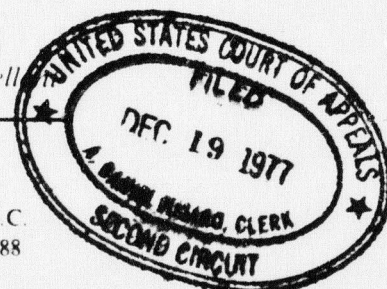
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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES
(pp. 1a-4a)

JUDGE DUFFY 75 CRIM. 337

D. C. Form No. 100 Rev.

TITLE OF CASE
THE UNITED STATES

ATTORNEYS

For U. S.:

Bart M. Schwartz, AUSA.
791-0039

US.
IRVING GOLDMAN

For Defendant:

Myron J. Greene, Esq.
450 Park Ave.
New York, N.Y.

FRIEDMAN & GASS, P.C.
99 Park Ave. NYC 10016
682-7474

(05) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DIST.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 18					
Sec. 371, 1341					
Consp. to commit mail fraud. (Ct. 1)					
Mail fraud. (Cts. 2-44)					
(Forty-four counts)					

DATE

PROCEEDINGS

4-1-75 Filed indictment.

4-14-75 Deft. (atty. present) Pleads not guilty. Motions returnable in 10 days. Ordered photographed and fingerprinted. Released on his own recognizance. Case assigned to Judge Duffy for all purposes. Bonsal, J.

4-16-75 Filed notice of appearance by Tanner & Friedman, P.C. 99 Park Ave. NYC 682-7474

4-15-75 Filed transcript of record of proceedings, dated 11/11/74

9-23-75 Pre-trial conference held & concluded. Defense counsel has one month to submit motions. The Govt. has four days to reply to such motions if any. Case to be ready for trial thereafter.....Duffy, J... 2-9-23-75 E-1

11-5-75 Filed affdvt. & notice of motion to dismiss the indictment, to stay prosecution, for discovery and a bill of particulars....Ret. 11-18-75 2PM

11-5-75 Filed memorandum in support of motion to dismiss etc.

PROCEEDINGS

5-75 ✓ Filed affdvt. of Bart M. Schwartz, AUSA in opposition to motion to dismiss.

12-5-75 ✓ Filed Govt's memorandum of law in opposition to motion to dismiss etc. *Incomplete*

2-5-75 Filed affdvt. of mailing of Govts. memorandum of law and affdvt. of AUSA. 2-12-

2-29-75 Pre-trial conf. held & concluded. case to be marked ready for ~~trial~~ trial on Jan. 19, 1976
Duffy, J.

2-30-75 Filed notice of readiness for trial...

-14-76 Filed transcript of record of proceedings, dated 9-23-75

1-15-76 Filed first supplemental bill of particulars...

* 2-1-76 ✓ Filed reply memorandum in support of motion to dismiss indictment..

-21-75 Filed reply affdvt. of ~~Arthur S. Friedman, Esq.~~ Arthur S. Friedman, Esq. in reply to AUSA Schwartz.

1-28-76 ✓ Filed Govt's rebuttal memorandum in opposition to motions to dismiss and for discovery...

-4-76 ✓ Filed transcript of record of proceedings, dated 12-29-75

7-9-76 Filed Def't's Notice that law firm of Tanner & Friedman, P.C. terminated effective 6-30-76 -- Friedman & Gass, P.C. 99 Park Ave. NYC 10016-682-7 to continue to represent def't.

-16-76 Pre-trial conf. held & concluded. Duffy, J. 3-9-16-76

-16-76 Filed transcript of record of proceedings dated: 9-16-76.

-14-77 Filed order that Dr. Meyer Texon and Arthur C. DeGraff be employed to examine def't. *
Ordered that Admin. Office of U.S.D.C. be directed to pay a reasonable fee*****
Duffy, J.

3-25-77 Medical Hearing Begun and Concluded. "DECISION RESERVED" DUFFY, J. 3-3-25-

7-7-77 Filed transcript of record of proceedings, dated 1-21-77

1-29-77 BEFORE DUFFY-Medical Hearing Continued & Concluded. 3-11-29-
Motion for a continuance based on Medical Reasons--
Denied in Open Court.

3-3-77 BEFORE DUFFY-CONFERENCE HELD Re: motion for discovery & to dismiss. 3-5-3-

-24-77 ✓ Filed transcript of record of proceedings - dated: 3-25-77.

-24-77 ✓ Filed transcript of record of proceedings - dated: 4-29-77.

-21-77 PRE-TRIAL CONFERENCE HELD AND CONCLUDED. DUFFY, J. 3-6-23-77

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
06-27-77	(Document No.) Filed opinion and order #46079 Deft. moves to dismiss the indictment, request discovery and inspection of certain items, and seeks a bill of particulars. The depts motion to dismiss the indictment is denied. The motions for discovery and inspection are denied except as indicated. The case is set down for trial on 8-23-77....Duffy, J....mailed notice.....				
7-5-77	FILED FOR 1977 5-3-77				
7-21-77	✓ Filed deft's Affidavit and Notice of motion for an order dismissing the indictment, etc. RET: 7-26-77.				
7-28-77	✓ Filed Deft's memorandum of law in opposition to the motion to dismiss indictment on speedy trial grounds.				
8-16-77	Filed memorandum and order by notice of motion filed 7-21-77 deft has moved to dismiss the indictment for denial of his speedy trial rights under the 6th amendment to the constitution. ***Deft's motion to dismiss the indictment on the grounds that he has been denied a speedy trial is denied....Duffy, J...mailed notice.....				
8-19-77	Filed transcript of record of proceedings, dated <u>Jan 23, 1977</u>				
8-22-77	Filed Govt's proposed examination of prospective jurors...				
8-22-77	Filed Govts memorandum of law in support of Govts application to preclude cross-examination of a witness by use of a 13 year old conviction....				
8-24-77	Filed True Copy of USCA Order that petition for a writ of mandamus together with a motion for a stay is Denied. m-n - notified US Atty.				
8-29-77	DUPLICATE Filed transcript of record of proceedings, dated <u>8-23-77</u>				
8-23-77	TRIAL BEGUN WITH JURY SELECTION.				
8-24-77	TRIAL CONT'D JURY SELECTION CONT'D.				
8-25-77	TRIAL CONT'D. JURY EMPANELLED & SWORN 12 JURORS & 5 ALTERNATES.				
8-26-77	TRIAL CONT'D. & ADJOURNED TO 8-29-77.				
8-29-77	TRIAL CONT'D.				
8-30-77	TRIAL CONT'D.				
8-31-77	NO TRIAL DATE				
9-1-77	TRIAL CONT'D.				
9-7-77	TRIAL CONT'D. ADJ TO 9-5-77.				

-17	TRIAL CONT'D - On Oral Motion by the Defense, the Court DECLARES A "MISTRIAL", JURY DISCHARGED.	3-9-30-77	E-1-
77	PTC HELD - Trial set down for Oct. 31, 1977. DUFFY, J		
1-77	Filed memorandum of law in opposition to defts motion to dismiss indictment...		
11-77	Filed transcript of record of proceedings Dated: August 25, 1977. 10/77 September 1, 2 6, 1977.		
10-25-77	PRE-TRIAL CONFERENCE HELD AND CONCLUDED. DUFFY, J	3-10-25-77	E-1-
10-23-77	Filed Opinion and Order No. 46487 -for the reasons stated Defendant's motion to dismiss the indictment is denied. So Ordered. DUFFY, J m-n notified US Atty.		
10-31-77	Filed order..The trial of this prosecution, scheduled to commence on 10-31-77 shall be stayed pending deft appeal from order of 10-23-77. DUFFY, J....m/n		
11-3-77	Filed notice of appeal from order denying defts motion to dismiss indictment for & violation of double jeopardy..Copy to U.S. ATTY.		
11-11-77	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED: 9-30-77.		
11-11-77	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED: 10-25-77.		

INDICTMENT (Filed April 1, 1975)
(pp. 5a-24a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA

-against-

IRVING GOLDMAN,

Defendant.

- - - - -x

The Grand Jury charges:

INTRODUCTION

1. The defendant, IRVING GOLDMAN was at all times relevant to this indictment until on or about January 8, 1975, the President and chief operating officer of Jola Candy Co., Inc. (hereinafter "Jola Candy"), 727 Washington Street, New York, New York (formerly 90 Ninth Avenue, New York, New York).

2. The defendant, IRVING GOLDMAN was, from in and around October, 1967 to in and around September, 1973, the Vice-President and a Director of Interborough News Company, Inc. (hereinafter "Interborough News"), Buffalo, New York (formerly 8th Avenue and 14th Street, New York, New York).

3. Interborough News was, at all times relevant to this indictment, a wholly owned subsidiary of Sportservice Corporation Buffalo, New York, and its related companies.

4. From in and around 1963 to on or about June 30, 1974, Interborough News had contracts with the New York City Transit Authority and its predecessors and successors in interest (hereinafter "Transit Authority"), pursuant to which contracts and amendments thereto Interborough News had the exclusive right to sell and distribute among other things, certain candies, food products and novelties (hereinafter "vending machine products") from vending machines located on property controlled by the Transit Authority including, among other places, stations located within the New York City subway system.

5. Co-conspirator, Jack Zander was, from on or about March 8, 1967, until on or about March 3, 1975, the President and chief operating officer of Interborough News.

6. Co-conspirator Jack Zander was, from in and around January, 1973, until on or about March 3, 1975, the President of Sportservice Corporation.

7. Seymour Wasserberger was, at all times relevant to this indictment until on or about January 19, 1973, Director of Concessions of the Transit Authority charged with responsibility, among other things, for representing the Transit Authority in its business affairs with companies such as Interborough News and thereafter until in and around July 1, 1973 was a special consultant to The Transit Authority.

COUNT ONE

The Grand Jury further charges:

8. From on or about January 1, 1967, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, the defendant IRVING GOLDMAN, and Jack Zander, named herein as co-conspirator, but not as a defendant, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and to commit certain offenses against the United States, that is, to violate the mail fraud statute, Title 18, United States Code, Section 1341 and the federal income tax law, Title 26, United States Code, Section 7206(1).

FIRST OBJECT OF THE CONSPIRACY

9. It was a part of said conspiracy that the defendant IRVING GOLDMAN and his co-conspirators would and did agree to defraud the Transit Authority of its lawful rights (a) to have its business affairs conducted honestly, according to proper standards and regulations, without illegal collusion between Transit Authority employees and owners and operators of private businesses who did business and had contracts with the Transit Authority and (b) to have said employees free to perform prop-

erly, impartially and honestly their official functions, unhindered and uninfluenced by the exertion on them of dishonest, unlawful and undue pressure and unhindered and uninfluenced by the offer and payment of bribes, gratuities and other things of value.

MEANS TO ACCOMPLISH THE FIRST OBJECT
OF THE CONSPIRACY

10. Among the means whereby the defendant IRVING GOLDMAN and his co-conspirators would and did carry out the first object of the said conspiracy were the following:

- (a) The defendant IRVING GOLDMAN and his co-conspirators would and did cause the preparation of three false and fraudulent Jola Candy invoices in the amounts of \$7500, \$750 and \$750 respectively. The defendant IRVING GOLDMAN, thereafter would and did cause these three false and fraudulent invoices to be mailed to co-conspirator Jack Zander at the corporate headquarters of Interborough News in Buffalo, New York;
- (b) Co-conspirator Jack Zander would and did cause checks drawn on bank accounts of Sportservice Corporation to be made payable to Jola Candy and to be mailed to Jola Candy

for the purpose of paying the false and fraudulent invoices;

- (c) The defendant IRVING GOLDMAN would and did cause checks drawn on the bank account of Jola Candy to be negotiated in order to obtain money to pay to Seymour Wasserberger, Director of Concessions, New York City Transit Authority.

SECOND OBJECT OF THE CONSPIRACY

11. It was further a part of said conspiracy that the defendant IRVING GOLDMAN and his co-conspirators would and did agree to defraud Interborough News of money, property and things of value.

MEANS TO ACCOMPLISH THE SECOND OBJECT
OF THE CONSPIRACY

12. Among the means whereby the defendant IRVING GOLDMAN and his co-conspirators would and did carry out the second object of the said conspiracy were the following:

- (a) Co-conspirator Jack Zander would and did cause employees of Interborough News, which company was then under contract with the Transit Authority, to order vending machine products for sale in vending machines in stations located

within the New York City Subway system directly from manufacturers and suppliers of said products. Thereafter, co-conspirator Jack Zander would and did cause the said manufacturers and suppliers to deliver their products to Interborough News' Offices in New York City and at the same time would and did cause the said manufacturers and suppliers to mail and deliver their invoices and bills for said products to Jola Candy instead of to Interborough News.

- (b) Defendant IRVING GOLDMAN would and did cause Jola Candy to mail invoices and bills to Interborough News which invoices and bills charged inflated and excessive prices for the vending machine products directly delivered to Interborough News from the said manufacturers and suppliers and which invoices and bills charged Interborough News for vending machine products received by Interborough News which would otherwise have been delivered free of charge to Interborough News by the manufacturers and suppliers;

- (c) Thereafter, the aforesaid Jola Candy bills and invoices were paid by checks drawn on the bank accounts of Interborough News and Sportservice Corporation and mailed to Jola Candy in New York City;
- (d) The defendant IRVING GOLDMAN and co-conspirator Jack Zander would and did, conceal, coverup from and fail to disclose to the owners and other officers of Interborough News and its parent corporation, Sportservice Corporation and its related companies, the interest that co-conspirator Jack Zander had in the profits realized by Jola Candy from transactions with Interborough News.
- (e) The defendant, IRVING GOLDMAN would and did cause checks in the approximate sum of in the excess of \$200,000 to be drawn on the account of Jola Candy, which checks would be made individually payable to Joy Goldman (Joy Futernick) and Laurie Goldman, children of the defendant, IRVING GOLDMAN, and to Brian F. Zander and Robin L. Zander, children of co-conspirator

Jack Zander and which checks were negotiated and thereafter paid out of the account of Jola Candy.

THIRD OBJECT OF THE CONSPIRACY

13. It was further a part of said conspiracy that the defendant IRVING GOLDMAN and his co-conspirators would and did agree to defraud The United States and The Internal Revenue Service, United States Treasury Department of truthful and accurate information pertaining to corporate financial transactions and by concealing the true nature of said corporate financial transactions and would and did agree to file and cause to be filed false and fraudulent United States Small Business Corporation Income Tax Returns, Forms 1120S, for Jola Candy, based upon false and fraudulent entries in the books and records of Jola Candy.

MEANS TO ACCOMPLISH THE THIRD OBJECTIVE OF THE CONSPIRACY

14. Among the means whereby the defendant IRVING GOLDMAN and his co-conspirators would and did carry out the third objective of the said conspiracy were the following:

- (a) Defendant IRVING GOLDMAN would and did cause false and fraudulent entries to be made in the

books and records of Jola Candy which misrepresented income received and expenses incurred;

- (b) Defendant IRVING GOLDMAN would and did cause false federal corporate income tax returns to be prepared based upon Jola Candy's books and records.
- (c) Defendant IRVING GOLDMAN would and did cause Jola Candy to file a fraudulent United States Small Business Corporation Income Tax Return, Form 1120S, for the fiscal year ending January 31, 1971 which falsely stated Jola Candy's gross receipts and gross sales to be \$201,819.38 and other deductions to be \$8,941.54.
- (d) Defendant IRVING GOLDMAN would and did cause Jola Candy to file a fraudulent United States Small Business Corporation Income Tax Return, Form 1120S, for fiscal year ending January 31, 1972 which falsely stated Jola Candy's gross receipts and gross sales to be \$235,694.00 and other deductions to be \$11,554.92.
- (e) Defendant IRVING GOLDMAN would and did cause Jola Candy to file a fraudulent United States

Small Business Corporation Income Tax Return, Form 1120S, for the fiscal year ending January 31, 1973 which falsely reported Jola Candy's gross receipts and gross sales to be \$262,783.39 and other deductions to be \$9,463.39.

OVERT ACTS OF THE CONSPIRACY

15. In furtherance of and to effect the objects of said conspiracy IRVING GOLDMAN, the defendant, and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere.

(a) In and around February or March 1967, the defendant IRVING GOLDMAN had a conversation in which he asked co-conspirator Jack Zander to cause Interborough News to do business with Jola Candy.

(b) In and around May or June, 1967, the defendant, IRVING GOLDMAN had a conversation in which he told co-conspirator Jack Zander that if Interborough News expanded its business with Jola Candy he, GOLDMAN, would find a way to make it personally profitable for Jack Zander.

(c) In and around the fall of 1968 the defendant IRVING GOLDMAN had a conversation in which he told co-conspirator Jack Zander that Jack Zander could conceal his interest in the

profits realized by Jola Candy and at the same time obtain monetary benefits by having his children become shareholders of Jola Candy.

(d) In and around February, 1970, Brian F. Zander and Robin L. Zander the children of Jack Zander, became shareholders of Jola Candy.

(e) On or about December 18, 1970, the defendant, IRVING GOLDMAN had a conversation with co-conspirator Jack Zander in which they discussed the payment of an approximate sum of \$5,000 to Seymour Wasserberger, Transit Authority Director of Concessions, for Wasserberger's assistance to Interborough News in connection with the re-negotiation of the Transit Authority contract with Interborough News and in which conversation they further discussed a method to create available cash for the payoff to Seymour Wasserberger.

(f) On or about December 18, 1970, co-conspirator Jack Zander caused a check to be drawn on the account of Sportservice Corporation in the amount of \$7,500, made payable to Jola Candy, in payment of the false, fictitious and fraudulent invoice he and defendant IRVING GOLDMAN had previously discussed and thereafter co-conspirator Jack Zander caused the said \$7,500 check to be mailed and delivered to Jola Candy, New York, New York.

(g) On or about December 21, 1970, defendant IRVING GOLDMAN, caused a false, fictitious and fraudulent Jola Candy invoice in the amount of \$7,500, to be mailed and delivered to co-conspirator Jack Zander in Buffalo, New York, for the purpose of obtaining an approximate sum of \$5,000 to be used to pay Seymour Wasserberger, Director of Concessions of the Transit Authority.

(h) On or about December 23, 1970, the \$7,500 check referred to in paragraph (g) was deposited in a bank account of Jola Candy, in New York, New York.

(i) In and around December, 1971, the defendant, IRVING GOLDMAN had a conversation with co-conspirator Jack Zander in which they discussed the payment of an approximate sum of \$500 to Seymour Wasserberger, Director of Concessions.

(j) On or about December 10, 1971, the defendant IRVING GOLDMAN, caused a false, fictitious and fraudulent Jola Candy invoice in the amount of \$750, to be mailed and delivered to co-conspirator Jack Zander in Buffalo, New York, for the purpose of obtaining an approximate sum of \$500 to be used to pay Seymour Wasserberger, Transit Authority Director of Concessions.

(k) On or about December 21, 1971, co-conspirator Jack Zander caused a check to be drawn on the account of New York

Sportservice, a company related to Sportservice Corporation, in the amount of \$750 made payable to Jola Candy, as payment of the false, fictitious and fraudulent invoice Zander had recently received by mail in Buffalo, New York, from defendant IRVING GOLDMAN and thereafter co-conspirator Jack Zander caused the said \$750 check to be mailed and delivered to Jola Candy, New York, New York.

(l) On or about December 27, 1971, the \$750 check referred to in paragraph (k) was deposited in a bank account of Jola Candy, in New York, New York.

(m) In and around January, 1973, the defendant, IRVING GOLDMAN, had a conversation with co-conspirator Jack Zander in which they discussed the payment of an approximate sum of \$500 to Seymour Wasserberger, Transit Authority Director of Concessions.

(n) On or about January 8, 1973, the defendant, IRVING GOLDMAN, caused a false, fictitious and fraudulent Jola Candy invoice in the amount of \$750, to be mailed and delivered to co-conspirator Jack Zander in Buffalo, New York, for the purpose of obtaining an approximate sum of \$500 to be used to pay Seymour Wasserberger, Transit Authority Director of Concessions.

(o) On or about January 12, 1973, co-conspirator Jack Zander caused a check to be drawn on the account of New York

Sportservice, a company related to Sportservice Corporation, in the amount of \$750 made payable to Jola Candy, in payment of the false, fictitious and fraudulent invoice Zander had recently received by mail in Buffalo, New York, from defendant IRVING GOLDMAN and thereafter co-conspirator Jack Zander caused the said \$750 check to be mailed and delivered to Jola Candy, New York, New York.

(p) On or about January 19, 1973, the \$750 check referred to in paragraph (o) was deposited in a bank account of Jola Candy, in New York, New York.

(q) On or about March 6, 1971, defendant IRVING GOLDMAN signed as President, a false Jola Candy United States Small Business Corporation Income Tax Return for the fiscal year ending January 31, 1971.

(r) On or about March 6, 1972, defendant IRVING GOLDMAN signed as President, a false Jola Candy United States Small Business Corporation Income Tax Return for the fiscal year ending January 31, 1972.

(s) On or about March 17, 1973, defendant IRVING GOLDMAN signed as President, a false Jola Candy United States Small Business Corporation Income Tax Return for the fiscal year ending January 31, 1973.

STATUTORY ALLEGATIONS

16. It was further a part of said conspiracy that the defendant IRVING GOLDMAN and his co-conspirators would and did devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises and that for the purpose of executing said scheme and artifice to defraud and attempting so to do they would use and cause to be used the United States mail.

17. It was further a part of said conspiracy that the defendant IRVING GOLDMAN and his co-conspirators would and did agree to defraud the United States and would and did make and subscribe United States Small Business Corporation Income Tax Returns, Forms 1120S, which contained and were verified by written declarations that they were made under the penalties of perjury, and which they did not believe to be true and correct as to every material matter therein.

(Title 18, United States Code, Section 371).

COUNTS TWO THROUGH FORTY-FOUR

The Grand Jury further charges:

18. Each and every allegation of the Introduction and Count One of this indictment is hereby repeated, realleged

and incorporated by reference in each of Counts Two through Forty-Four of this indictment as though fully set forth therein.

19. On or about the dates hereinafter set forth in the Southern District of New York and elsewhere, the defendant IRVING GOLDMAN and Jack Zander, not named as a defendant herein, and other persons known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent representations and promises, as set forth in the Introduction and Count One of this indictment, and for the purpose of executing said scheme and artifice and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, and did cause to be delivered by mail according to the directions thereon, certain mail matter to be sent and delivered by the United States Postal Service as hereinafter set forth:

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>	<u>ADDRESS</u>
2	December 18, 1970	Sportservice check for \$7,500.	Jola Candy Co., Inc. 727 Washington St. New York, NY 10014
3	December 21, 1970	Jola Candy invoice for \$7,500.00	Sportservice Corporation 703 Main Street Buffalo, N.Y. 14203

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>	<u>ADDRESS</u>
4	December 10, 1971	Jola Candy invoice for \$750.00	New York Sport Service 703 Main Street Buffalo, N.Y. 14203
5	December 21, 1971	Sportservice check for \$750.00	Jola Candy Co., Inc. 727 Washington St. New York, N.Y. 10014
6	January 8, 1973	Jola Candy invoice for \$750.00	New York Sport Service Inc. 703 Main Street Buffalo, New York 14203
7	January 12, 1973	Sportservice check for \$750.00	Jola Candy Co., Inc. 727 Washington St. New York, N.Y. 10014
8	December 9, 1970	Two Jola Candy checks, each in the amount of \$4,000.00.	Jack Zander 30 New Amsterdam Ave. Buffalo, N.Y.
9	January 30, 1971	Two Jola Candy checks, each in the amount of \$6,000.00.	Jack Zander 30 New Amsterdam Ave. Buffalo, N.Y.
10	March 6, 1971	Two Jola Candy checks, one in the amount of \$419.06 and one in the amount of \$419.07.	Jack Zander 30 New Amsterdam Ave. Buffalo, N.Y.
11	August 25, 1971	Two Jola Candy checks, each in the amount of \$3,000.00.	Jack Zander 30 New Amsterdam Ave. Buffalo, N.Y.
12	December 1, 1971	Two Jola Candy checks, each in the amount of \$3,500.00.	Jack Zander 30 New Amsterdam Ave. Buffalo, N.Y.
13	February 8, 1972	Two Jola Candy checks, each in the amount of \$3,235.70.	Jack Zander 30 New Amsterdam Ave.

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>	<u>ADDRESS</u>
14	June 13, 1972	Two Jola Candy checks, each in the amount of \$4,000.00.	Jack Zander 30 New Amsterdam Ave. Buffalo, N.Y.
15	December 11, 1972	Two Jola Candy checks, each in the amount of \$4,000.00.	Jack Zander 30 New Amsterdam Ave. Buffalo, N.Y.
16	March 10, 1973	Two Jola Candy checks, one in the amount of \$3,967.08 and one in the amount of \$3,967.07.	Jack Zander 30 New Amsterdam Ave.
17	March 25, 1970	Sportservice check in the amount of \$11,128.65.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
18	May 5, 1970	Sportservice check in the amount of \$10,299.50.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
19	July 13, 1970	Sportservice check in the amount of \$9,428.70.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
20	October 29, 1970	Sportservice check in the amount of \$9,207.05.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
21	May 26, 1971	Sportservice check in the amount of \$9,152.70.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
22	July 22, 1971	Sportservice check in the amount of \$11,804.50.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
23	October 13, 1971	Sportservice check in the amount of \$15,035.80.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>	<u>ADDRESS</u>
24	November 17, 1971	Sportservice check in the amount of \$16,066.40.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
25	December 14, 1971	Sportservice check in the amount of \$15,713.60.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
26	December 31, 1971	Sportservice check in the amount of \$11,162.80.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
27	January 12, 1972	Sportservice check in the amount of \$14,688.75.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
28	January 28, 1972	Sportservice check in the amount of \$13,520.60.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
29	February 23, 1972	Sportservice check in the amount of \$12,674.15.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
30	March 2, 1972	Sportservice check in the amount of \$9,518.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
31	March 8, 1972	Sportservice check in the amount of \$9,296.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
32	March 20, 1972	Sportservice check in the amount of \$11,083.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
33	April 21 1972	Sportservice check in the amount of \$10,103.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
34	May 26, 1972	Sportservice check in the amount of \$11,299.85	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>	<u>ADDRESS</u>
35	August 14, 1972	Sportservice check in the amount of \$11,822.98.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
36	September 19, 1972	Sportservice check in the amount of \$9,098.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
37	October 17, 1972	Sportservice check in the amount of \$10,859.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
38	October 27, 1972	Sportservice check in the amount of \$9,495.35.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
39	November 17, 1972	Sportservice check in the amount of \$13,599.05.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
40	December 15, 1972	Sportservice check in the amount of \$10,334.65.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
41	March 7, 1973	Sportservice check in the amount of \$9,407.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
42	April 11, 1973	Sportservice check in the amount of \$9,860.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
43	May 16, 1973	Sportservice check in the amount of \$9,252.63.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.
44	October 8, 1973	Sportservice check in the amount of \$9,728.00.	Jola Candy Co., Inc. 727 Washington St. New York, N.Y.

(Title 18, United States Code, Sections 1341 and 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

NOTICE OF MOTION (DATED JULY 21, 1977) FOR ORDER DISMISSING
INDICTMENT (pp. 25a-26a)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-against-

75 Cr. 337 (KTD)

NOTICE OF MOTION

IRVING GOLDMAN,

Defendant.

-----X

S I R S :

PLEASE TAKE NOTICE that upon the annexed Affidavit of Arthur S. Friedman, sworn to the 21st day of July, 1977, and upon all of the prior proceedings heretofore had herein, the undersigned will move this Court at Room 36 of the United States Courthouse, Foley Square, New York, New York, on the 26th day of July 1977, at 2:00 in the afternoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 48(b) of the Federal Rules of Criminal Procedure dismissing the Indictment on the ground that defendant has been denied his right to a speedy trial as guaranteed by the Sixth Amendment to the Constitution, the Speedy Trial Act (18 U.S.C. §3161 et seq.), the Southern District Plan for Achieving Prompt Disposition of Criminal Cases, and the Second Circuit Rules Regarding Prompt

Disposition of Criminal Cases, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: New York, New York
July 21, 1977

Yours etc.,

FRIEDMAN & GASS, P.C.

By Stanley L. Friedman

A Member of the Firm
Office & P.O. Address
99 Park Avenue
New York, New York 10016
Tel. No. 212-682-7474

-and-

MILLARD, GREENE & UDELL
450 Park Avenue
New York, New York 10022
212-832-2530

Attorneys for Defendant

TO: Robert B. Fiske, Jr., Esq.
United States Attorney
for the Southern District of
New York
1 St. Andrews Plaza
New York, New York 10007

75 Cr. 337 (KTD)

IRVING GOLDMAN,

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
)

1. I am a member of the firm of Friedman & Gass, P.C., which, together with the firm of Millard, Greene & Udell, is co-counsel to defendant Irving Goldman. I am familiar with the facts and circumstances hereinafter set forth and make this Affidavit in support of the defendant's motion to dismiss this Indictment for failure to grant defendant a speedy trial. As will be hereinafter set forth, the history of this case, from Indictment to the present, has been marked by extraordinary delay caused by, with one small exception, no fault of defendant. And I submit that the consequence of that delay must be dismissal of the Indictment.

2. The Indictment herein was returned on the 1st day of April, 1975, more than two years ago. Defendant appeared before the Court (Hon. Dudley B. Bonsal, U.S.D.J.) and pleaded not guilty to the Indictment. The case was thereupon assigned to Hon. Kevin Thomas Duffy, U.S.D.J.

3. On the 29th day of May, 1975, counsel for the parties appeared before the Court. At that time, the pendency in the Supreme Court of the State of New York, County of New York, of a previous Indictment against the defendant, with respect to the same subject matter as the Federal Indictment, was brought to the attention of the Court, and in consequence of colloquy then had, the Court directed that defendant's time to file motions addressed to the instant Indictment be deferred until a date ten days after determination by the State Court of motions addressed to the State Court Indictment. At the same time, however, this Court directed counsel for the respective parties promptly to confer with each other to attempt to reach agreement with respect to any discovery sought by the defendant of the Government. It was understood, and confirmed by writing (see my letter dated June 12, 1975, hereto annexed, made a part hereof, and marked Exhibit A) that such time extension for the making of defendant's motion to dismiss would not be invoked by defendant in respect of Part 4 of the Southern District Plan for Achieving Prompt Disposition of Criminal Cases. *

4. Thereafter, meetings were held between counsel. There were certain areas of agreement reached with respect to discovery sought by defendant. Other areas were in dispute.

* By letter dated June 16, 1975, the Government notified the Court that it was "ready for trial", subject to receiving three weeks' notice of the trial date.

On the 19th day of June, 1975, the Court was advised in detail with respect to the remaining and unsettled areas of dispute between the parties with respect to pre-trial discovery. Further correspondence on the same subject was also exchanged.

5. On August 11, 1975, defendant's counsel received a Bill of Particulars (as to matters consented to) and was advised of the availability for inspection of documents which the Government agreed to produce.

6. Under date September 4, 1975, Government counsel wrote to the Court, with a copy to defendant's counsel, referring back to the Court's direction on May 29 with respect to the timing of the making of defendant's motion to dismiss. The Government referred to its prior opposition to that arrangement and then proceeded to inform the Court of the State Court schedule. Government counsel advised that argument on defendant's motion to dismiss in the State Court was scheduled for September 9; that it was not known when the motion would be decided; and that there was only one Judge sitting on cases brought by the Special Prosecutor -- all of which the Government contended would lead to lengthy delays. After further recitations the Government requested that the Court set a schedule for all motions in the pending case. A copy of that letter is hereto annexed, made a part hereof, and marked Exhibit B. We responded to that letter

by letter dated September 9, 1975.

7. On the 12th day of September, 1975, counsel for the Government wrote another letter to the Court, a copy of which is hereto annexed, made a part hereof, and marked Exhibit C. In that letter, the Government again requested the Court to set a schedule in this case independent of proceedings in the State Court.

8. On September 23, 1975, counsel for the parties appeared before this Court. The prior arrangement with respect to the timing of defendant's motion to dismiss was terminated. The Court said, inter alia:

"The case is going to have to be tried and tried relatively fast.***We are going ahead with our part of this case."

Defendant requested and was given one month within which to file his motions. In response to the Court's inquiry Government counsel said that he believed the Government would require four days time in which to respond. Hereto annexed, made a part hereof, and marked Exhibit D is a copy of the transcript of the proceedings held before the Court on September 23, 1975.

9. On November 3, 1975, pursuant to extension granted by the Court, defendant's motion papers in support of his motion to dismiss were served. The Government's answering papers were due

on November 7. By ex parte application to the Court, and without any prior request to defendant to agree thereto, the Government obtained a 30 day extension of time within which to respond.

A copy of a letter which was sent to Government counsel on November 7, with respect to his act. is hereto annexed, made a part hereof, and marked Exhibit E.

10. Ultimately, on December 5, 1975, the Government served its papers in opposition to defendant's motion to dismiss. On December 29, 1975, a conference was held with the Court at which time the Court was informed that the Government's direct case would require five trial days. One day thereafter, on December 30, the Government filed a second statement of readiness for trial. Thereafter, on January 20, January 28 and February 9, 1976, defendant and the Government exchanged further papers in support of and in opposition to defendant's motion to dismiss.

11. On March 3, 1976, Government counsel wrote to the Court and concluded his letter with a request for the Court's assistance in scheduling matters and to minimize inconvenience to prospective Government witnesses. He asked for the Court's advice of a likely trial date. On March 5, 1976, I responded, calling attention to the fact that the Government was requesting the fixing of a trial date "at a time when the defendant's motions

to dismiss remain pending before the Court."

12. In April, 1976, defendant underwent surgery for a triple coronary bypass.

13. On the 24th day of August, 1976, without any prior stimulation from defendant or his counsel, and at a time when the motions to dismiss and for discovery were still pending before the Court, undecided, counsel for the Government wrote to counsel for defendant, with a copy of such letter indicated to be sent to the Court. A copy of that letter is annexed hereto, made a part hereof, and marked Exhibit F. Therein, counsel for the Government adverted to the report that the defendant had undergone "surgery relating to a cardiac ailment" and stated:

"Pursuant to the Speedy Trial Act of 1974 and the Statement Of Time Limits and Procedures For Achieving Prompt Disposition of Criminal Cases adopted in the Southern District of New York the trial of this case must commence by the end of this year or possibly the end of January at the latest. However, there is an exception if the defendant is physically incompetent. Title 18, United States Code, Section 3161(h)(4); Statement, §10(a). * * * I am writing in an effort to avoid or minimize any delay in the start of the trial which might result from that surgery.

If you anticipate seeking a delay in the trial for medical or related reasons, the Government will seek to have a physician chosen by the Government examine Mr. Goldman, review his medical records and communicate with his physician(s).

* * *

Accordingly, if you now anticipate seeking a delay for medical or related reasons please advise us promptly. If no such request for a delay is not anticipated, please advise as soon as you believe the need for such a request has arisen, if it ever does." (emphasis supplied)

14. On the 31st day of August, 1976, I responded to the foregoing by letter (with copy to the Court) a copy of which is annexed hereto, made a part hereof, and marked Exhibit G. In it, we told Government counsel that his letter was manifestly premature (since the pending motions had still not been decided) and we declined to accede to his attempt to exercise judicial function.

15. Shortly after this exchange of correspondence the Court communicated with Government counsel to direct that counsel for the parties appear before it on September 16, 1976. A copy of the transcript of that appearance, with certain hand-noted corrections made by us thereto, is annexed hereto, made a part hereof and marked Exhibit H. As appears therefrom, the Court inquired whether medical examinations had been conducted. Government counsel responded that he had suggested in correspondence that some procedure for medical examination of defendant be worked out by consent " * * * if Mr. Friedman anticipated that Mr. Goldman's medical condition would be such that he could not stand trial before the end of the year." The Court then inquired whether

defendant's counsel expected that defendant would be ready to stand trial before the end of the year and was told that counsel did not know the answer. The Court was further advised that counsel had written to the Government to tell the Government that its inquiry was "premature". The Court was informed that defendant was hospitalized in the Spring and had come out of the hospital. Defendant's counsel then added:

"All I have said to Mr. Schwartz is that he raises the question [readiness to stand trial and medical examination] now at a time when the Court has pending before it motions with respect to the indictment."

The Court then stated:

"I am not worried about those motions. What I am worried about is do we have a live defendant, or one who is not [semi-dead]."

The Court then inquired whether counsel could agree on a cardiologist. Counsel for the defendant stated:

"* * * What I am saying, at this point of time what would be involved potentially to the defendant in that kind of an examination, it is premature, it may never be necessary in the case, and I don't see until such time as it is necessary that it be done. That is what I told Mr. Schwartz.
* * *"

There is no question in the world that the man was hospitalized in the spring, he had very serious surgery done. Everybody knows that. But I don't know why it is that we are obliged to go forward now when it is not necessary and say we are willing to have an examination that may never be

relevant to anything this Court has to do."

16. The Court then concluded that if the examination was not going to hurt the defendant "* * * go ahead and have the examination". If counsel could not agree on a doctor to perform the examination, the Court said that it would select one. The Court's last words on the occasion of that appearance were:

"If you can't agree on somebody by that time, I will appoint a man. But I still want him examined now.* * *"

17. Although there were no motion papers filed by the Government as prelude to the appearance before the Court on September 16th, there were certain revelations stemming from that appearance which are of interest. Thus, on September 17th, a newspaper story was carried by the New York Post purporting to describe, inter alia, the occurrence at the hearing before this Court. A copy of that news story is hereto annexed, made a part hereof, and marked Exhibit I. Pertinent to the present application are the following quotations.

"A series of legal maneuvers and the illness of a judge delayed the start of the trial for a year and then the trial was put off indefinitely when Goldman underwent open heart surgery last March.

Under new federal guidelines aimed at giving

defendants speedy trials, Goldman must be tried by Dec. 31 or else the prosecution forfeits its case. The guidelines do include exceptions for illness, but Goldman's lawyers have not contended recently that he is too sick to stand trial.

Yesterday Asst. U.S. Attorney Bart Schwartz, head of the unit on official corruption, asked Federal Judge Kevin T. Duffy to order a medical examination for Goldman.

Goldman's lawyer, Arthur Friedman opposed the motion, contending Duffy should first rule on the welter of defense motions to have the indictment thrown out on legal grounds, and then consider the medical question.

Duffy said his 'main concern was whether we have a live defendant or a semi-dead one.' A medical examination, he said, would not hurt Goldman and he directed Schwartz and Friedman to agree on a cardiologist." (emphasis supplied)

18. That article in the New York Post prompted a letter from me to the Court with copy to Government counsel. A copy of such letter, dated September 24, 1976, is hereto annexed, made a part hereof, and marked Exhibit J. Part of the subject matter of my letter had to do with certain statements contained in the foregoing news story, the genesis of which had to be from Government sources. I referred to the article's assertion that " * * * legal maneuvers and the illness of a judge delayed the start of the trial for a year and then the trial was put off indefinitely when Goldman underwent open heart surgery last March".

I said to this Court:

"Putting aside the snide reference to 'legal maneuvers', we know of no illness of a judge which has delayed the start of the trial. And we further know of no postponement, indefinite or otherwise, of the trial on account of Mr. Goldman's surgery. The effort to make it appear that proceedings in this case have already been deferred because of Mr. Goldman's surgery is simply without any basis in fact -- even though the Government may be pleased to see such report given circulation. Mr. Goldman has not heretofore and still has not, made any application for deferment of trial. Any such application at this juncture and heretofore would have been premature."

19. My letter also referred to the fact that the paragraph of the news story which purported to give an explanation of the requirements with reference to speedy trials and a December 31, 1976, deadline stemmed similarly from sources within the Government.

20. Promptly after the September 16th Court appearance, and pursuant to the Court's direction, counsel for the parties met to exchange lists of cardiologists. At the same time, counsel for defendant advised government counsel that there was an indication of cerebral involvement and that, accordingly, it might be useful to determine whether the parties could agree on the selection of a neurovascular specialist as well as a cardiologist. The name of one such specialist was given by

defendant's counsel to the Government's counsel at that time. When the respective lists of proposed cardiologists were exchanged it was discovered that there was one name that was common to both lists. That name was Dr. Arthur DeGraff, Jr.

21. On October 5, 1976, Government counsel wrote to me in further reference to the matter of selection of physicians and suggested that the physician to be used should be Dr. Meyer Texon, whose name appeared on the Government's list of proposed cardiologists, but had not appeared on the list furnished by me. According to Government counsel, he suggested Dr. Texon,

"* * *because he has advised us that, based upon your description of Mr. Goldman's medical problems, which we have conveyed to him, he is qualified to report on both the heart and neurovascular ailments."

22. In light of the fact that Dr. Texon was one of the two physicians named by the Court, I note that when Dr. Texon testified before the Court on March 25, 1977, he specifically disclaimed any expertise in the field to which electroencephalograms pertain (Transcript p. 52); and further, when there was interrogation with respect to cerebral infarct, Dr. Texon declined comment because, as he put it, that was a "neurological opinion" which he stated was not within his field (Transcript, p. 56).

23. The Government proposed an alternate to Dr. Texon, namely, Dr. Paul Anderson. Surprisingly, the Government entirely put aside any suggestion that Dr. DeGraff be used.

I responded by letter dated October 15, 1976, suggesting again that Dr. DeGraff be used as the cardiologist since he was on both lists. I further suggested that the Government propose the name of a neurovascular specialist in the event that the one designated by defendant's counsel was not satisfactory.

24. Thereafter, it appears that Government counsel wrote to the Court on October 28, 1976, with a copy indicated to be sent to counsel for defendant. (A copy of such letter is hereto annexed, made a part hereof, and marked Exhibit K). Government counsel reported the inability of counsel to agree on the selection of a physician to examine Mr. Goldman and urged selection of the physician proposed by the Government. Government counsel also submitted a proposed order. The Government's letter to the Court also indicated an intention to supply to the physician designated by the Court certain surveillance reports which, according to the Government, would be revealing of the nature of the activities carried on by the defendant after his release from the hospital. However, the Government proposed to do this without supplying to defendant's counsel copies thereof, at least

until the examination of the defendant had been completed -- on the ground that such disclosure prior to examination allegedly would enable defendant to "fabricate a story to subvert the precise results of the surveillance". Counsel for defendant did not receive a copy of that letter until a copy was delivered in open Court on January 21, 1977.

25. On January 13, 1977, the Court signed an order appointing Drs. DeGraff and Texon to examine the defendant and report to the Court. On January 18, 1977, Government counsel sent a letter to the doctors enclosing a copy of the Court's Order and submitting to them as well copies of the surveillance reports and photographs. The letter to the doctors stated, among other things:

"The facts contained in these reports [surveillance reports] should not be made available to Mr. Goldman or his representatives in advance of the physical examination nor in any manner which would afford him an opportunity to fabricate an explanation for the results of the surveillance."

26. I received a copy of Government counsel's letter on January 21, 1977. Since this was the first notice which we had of the Government's surveillance reports and the proposed use thereof, we immediately brought the matter to the attention of the Court and a hearing was held that day whereat we learned

for the first time of the existence of the Government's letter of October 28, 1976. The Court directed that a letter be prepared to indicate to the physicians that it was the Court's instruction that they should not infer from the Government's letter that Mr. Goldman would not respond truthfully to questions put to him by the physicians. A copy of such letter, dated January 21, 1977, was sent by the Government to the physicians.

27. Thereafter, defendant was examined by the physicians who rendered their reports to the Court and to counsel. The Court held a hearing with respect to this matter on March 25, and April 29, 1977. The physicians testified at the first hearing and certain IRS Intelligence Division representatives testified at the second. It was Dr. Texon's opinion that the defendant could stand trial. It was r. DeGraff's opinion that he could not.

28. At the conclusion of the hearing of April 29, 1977, the Court rendered an immediate summary determination to the effect that although the defendant might have a cardiac condition, and might even have angina, "* * * that is not sufficient to put off the trial of this case. We will pick a jury on May 9th". (Transcript, p. 46). When the Court was told that there was still pending and had been pending for sometime a variety of motions, the Court stated:

"I will take care of them before the day is out." (Transcript, p. 46).

Counsel for defendant objected to this trial schedule which gave ten days notice of trial at a time when the motions which had been pending had not yet even been decided, and at a time when the discovery motions had not yet been decided (Transcript p. 47, et seq.).

29. Furthermore, counsel for defendant brought to the Court's attention the Government's previous written advice to the Court that if the case were not tried by the end of the year 1976, it would run afoul of speedy trial requirements (Transcript, p. 48). The Court asked for a copy of the Government's letter of August 24, 1976, to that effect. At the conclusion of the hearing the Court stated that it would reconsider the setting of the trial date and reserved decision thereon (Transcript, p. 50).

30. On the afternoon of the same day, April 29, 1977, a letter was hand delivered to the Court, with copy to Government counsel, enclosing a copy of the letter of August 24, 1976, theretofore sent by the Assistant United States Attorney to the Court. A copy of such letter of April 29, 1977, is hereto annexed, made a part hereof, and marked Exhibit L. At the same time another letter was hand delivered to the Court on that day

stating the time requirements which defendant had in order to prepare for trial of the case after completion of discovery.

31. There was a further appearance before the Court on May 3, 1977. At that time the Court stated that the first thing it was required to do was to get the discovery motions out of the way, adding that the Court had been under a misapprehension that much of the discovery disputes had been cleared up between the parties. The Court then stated that the May 9th trial date was totally impractical since the Court would have to go through a "pile of paper".

32. Between the 3rd day of May, 1977, and the 23rd day of June, 1977, there were telephone calls from the chambers of the Court which sought to have clarification with respect to the makeup of the papers theretofore submitted on the motions -- particularly with respect to discovery. Additional copies of various papers germane to those matters were then furnished to the Court.

33. Defendant was next summoned to appear with counsel before the Court on June 23, 1977. No sooner was defendant's case called, than this Court commented that "[a]s with every case, we have a speedy trial problem in this case also." (Transcript, p. 2). In any event, defendant's counsel again brought to the

attention of the Court this speedy trial problem, adverting to the fact that the motion to dismiss had been pending for over one year and a half. The Court then addressed counsel for the Government on the subject of excusable time, referring to the prior "stay" and referring as well to the defendant's alleged application to defer the trial for medical reasons. As the Transcript reflects (a copy of which is hereto annexed, made a part hereof, and marked Exhibit M) the Court was informed that the "stay" had been of limited time duration (and in any event, certain proceedings had been ongoing during the time of "stay") and the defendant had never asked the Court to defer trial for medical reasons. Counsel for the Government added that excusable time would, in his view, include the time during which the Court had before it the defendant's motion to dismiss.*

34. On June 27, 1977, this Court issued its decision denying the defendant's motion to dismiss and ruling on the motions for discovery and bill of particulars. In the decision, the Court set a trial date of August 23, 1977.

35. By reason of all of the foregoing, and by the Government's own proclamation as well, this case stands in stark violation of the rules regarding speedy trial in force in this circuit and district, and as well under the Speedy Trial

* That argument is wrong as a matter of law. See, e.g. United States v. Vispi, 545 F.2d 328 (2d Cir. 1976); 18 U.S.C. §3161(h)(1)(G) (only thirty day delay permitted while "any proceeding concerning the defendant

Act and the constitutional mandates of the Sixth Amendment. With the sole possible exception of the time during which the case was under direction for limited stay, which amounts to, at most, some 4 months, all other time which has passed here is calculable in the determination of speedy trial requirements. And, as pointed out heretofore, when the Government itself proclaimed that January 31, 1977, was the time limit for speedy trial purposes in this case, it did so when it was fully aware of the qualified "stay" and the pendency of the motions to dismiss and for discovery.

WHEREFORE, your deponent prays that the within motion be granted and the Indictment be dismissed.

ARTHUR S. FRIEDMAN
ARTHUR S. FRIEDMAN

SWORN to before me this
21st day of July, 1977

HELENE KLEIN
Notary Public, State of New York
No. 31-7387450
Qualified in New York County
Term Expires March 30, 1978

MEMORANDUM AND ORDER OF HON. KEVIN THOMAS DUFFY ON MOTION TO
DISMISS INDICTMENT (pp. 46a-59a) 46a
UNITED STATES DISTRICT COURT (Filed August 16, 1977)
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA	:	MEMORANDUM AND ORDER
-against-	:	
IRVING GOLDMAN,	:	75 Cr. 337 (KTD)
Defendant.	:	

-----X

APPEARANCES:

HONORABLE ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Government
By: Andrey Strauss
Assistant United States Attorney
Of Counsel

FRIEDMAN & GASS, P.C.
By: Arthur S. Friedman, Esq.
Peter N. Wang, Esq.
Of Counsel

MILLARD, GREENE & UDELL, Esqs.
Attorneys for Defendant

KEVIN THOMAS DUFFY, D.J.

By notice of motion filed July 21, 1977, defendant has moved to dismiss the indictment for denial of his speedy trial rights under the Sixth Amendment to the Constitution, the Speedy Trial Act, 18 U.S.C. § 3161, et seq., the Southern District Plan for Achieving Prompt Disposition of Criminal Cases, and the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases.

Irving Goldman was indicted on April 1, 1975 for conspiracy and mail fraud. At a pre-trial conference before me on May 29, 1975 I granted his request, over the government's objection, to defer his time to file motions challenging the indictment until a date ten days after determination by the New York State Supreme Court of motions addressed to prior state indictments covering supposedly the same subject matter as the federal one. Defendant represented at that time that this extension would not be invoked by him with regard to the mandate of Rule 4 of the Plan for Achieving Prompt Disposition of Criminal Cases, the then-governing speedy trial plan for the Southern District of New York. Notwithstanding this representation, the government repeatedly urged the setting of a fixed schedule for filing motions, and announced its readiness for trial by letter dated June 16, 1975.

At a pre-trial conference on September 23, 1975, four months after the granting of defendant's request for the extension, I allowed him one month within which to file his motions, over defendant's protestations that I continue to await rendition of a decision on the state court motions. After obtaining yet another extension, defendant submitted motion papers on November 3, 1975 in support of a motion to dismiss the federal indictment. Also contained in these papers were various discovery requests and a request to stay

prosecution of this action pending the outcome of the state proceedings. Because of the voluminous nature of this motion, the government was granted an extension of time to respond, and it did so on December 5, 1975.

On December 29, 1975 the parties appeared for another pre-trial conference at which defendant requested, and was granted, a three-week period within which to inspect certain documents and submit reply papers. The following day, December 30, 1975, the government filed a second notice of readiness for trial. Defendant's reply brief was submitted on January 21, 1976; the government responded on January 28, 1976. According to defendant, the motion was not fully submitted until February 9, 1977.

In March or April 1976 Goldman underwent surgery for a triple coronary bypass. At a conference on September 16, 1976, when I learned that no medical examination had yet been conducted to determine Goldman's medical condition and fitness to stand trial, I directed the parties to have defendant examined, adding that if the parties could not agree on a doctor, I would appoint one. By January 1977 the parties could not so agree; consequently, by order dated January 13, 1977 I appointed two doctors to examine Goldman and report to the court. A medical hearing with respect to Goldman's condition was then held, which concluded on

April 29, 1977. This hearing resulted in a determination that day that Goldman was fit to stand trial and the trial was set down for May 9, 1977. Defendant strenuously objected to this trial date. A further conference was then held on May 3, 1977 and the trial date was deferred.

On June 23, 1977 I held another conference to ascertain defendant's readiness to proceed to trial and was informed of defendant's intention to move to dismiss the indictment on speedy trial grounds should an unfavorable ruling on the motion to dismiss be obtained. Despite defendant's assertions to the contrary, the motion to dismiss, it is emphasized, contained a request to stay this prosecution pending final determination of the two state prosecutions; and, I note, it was not until May 12, 1977 that defense counsel informed my chambers that the second state indictment had just been dismissed.

On June 27, 1977 I issued a 34-page opinion and order denying the motion to dismiss and ruling on the various additional requests. A trial date of August 23, 1977 was set.

On July 21, 1977 defendant filed the instant motion to dismiss the indictment on speedy trial grounds, notwithstanding his history of requests for a stay of the prosecution, the conducting of a medical examination and hearing, and his persistent opposition to the setting of a trial date while his various motions were sub judice. For the reasons enumerated hereinafter, the instant motion is denied.

The challenge to the indictment based on the applicable local rules is palpably insubstantial. From April 1, 1973 until September 29, 1975 this district was governed by the Plan for Achieving Prompt Disposition of Criminal Cases; thereafter until July 1, 1976 when procedures pursuant to the Speedy Trial Act of 1974 went into effect, this district was governed by the Interim Plan pursuant to that Act. Under Rules 4 and 5, respectively, of the pre-July 1976 plans, the government was required to be ready for trial within six months of the filing of this indictment.

That requirement was clearly satisfied in this case. The government's first notice of readiness was filed on June 16, 1975, just two and one-half months following the April 1, 1975 return of the instant indictment. The second notice of readiness was filed on December 30, 1975. Disregarding for the moment the first notice of readiness, but bearing in mind that defendant was granted a stay from May 29, 1975 to at least September 23, 1975 (no less November 3, 1975 when the first set of motion papers were filed) during which time the strictures of Rule 4 were concededly suspended, the second notice of readiness was well within the six-month limitation.

Defendant urges that the government's notices of readiness must be disregarded because of the open discovery items. See United States v Pollack, 474 F.2d 828 (2d Cir. 1973) (remanded for findings on whether failure to comply with an outstanding discovery order rendered the notice of readiness meaningless). However, there is no reason to doubt

the sincerity of the government's December 30, 1975 notice of readiness despite the fact that it was aware of open discovery issues when the notice was filed, for substantially all the material subsequently ordered produced had already been made available to defendant. The material subsequently ordered produced under Brady v Maryland, 373 U.S. 83 (1963), consisted of an arrest record of one Harold Rosedale, which defendant claims is not even Brady material. The fact that defendant asserts that the government is withholding Brady material does not make it so. If defendant's claim be true, appropriate action will be taken at the time of trial when such a showing is made.

Moreover, the government was not the party dragging its feet in this case; it was the defendant who sought stays, deferrals, and extensions. Although Goldman was indicted on April 1, 1975, it was not until some seven months later that defendant filed his discovery requests and sought a bill of particulars; and from that moment through May 1977 defendant opposed all attempts to speed this case to trial. Cf. United States v Arredo-Sarmiento, 545 F. 2d 785, 791 (2d Cir. 1976). It was clearly the defendant who was the instigator of a shoddy attempt to delay whatever justice might be found at trial. Under these circumstances it cannot be said that when the government indicated its notice of readiness for trial, it did not intend to immediately proceed.

Any objection based on the Speedy Trial Act of 1974 (the Act), 18 U.S.C. § 3161, et seq., and implementing post July 1, 1966 Southern District Plan for Prompt Disposition of Criminal Cases must also fail for much the same reasons. Pursuant to the provisions of the Act and the Plan a defendant such as Goldman is required to be tried within 180 days of the indictment, 18 U.S.C. § 3161(g); however, cases pending on July 1, 1976, the effective date of the Act, are to be tried within 180 days of July 1, 1976. 18 U.S.C. § 3163(b)(2); Rule 5(a)(1) of the Statement of Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases (the local rules).

Notwithstanding this requirement, certain periods are expressly excluded from the 180-day calculation. 18 U.S.C. § 3161(h); Rule 10(a) of the local rules. Exclusion is mandated for "delay resulting from an examination of the defendant, and hearing on ... his physical incapacity," 18 U.S.C. § 3161(h)(1)(A), and "delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement" 18 U.S.C. § 3161(h)(1)(G). Thus, the 227-day period from September 16, 1976, when a physical examination of Goldman was directed until the conclusion of the medical hearing on April 29, 1977 is excluded, (the extensive delay being caused mostly by the defendant) as is a thirty-day period during the pendency of defendant's complex and voluminous motions which resulted in my lengthy opinion and

order. (Here again we are faced with the inventive barrage of letters shifting the sands upon which the various prongs of the motions were posited.) Of the period of 420 days from July 1, 1976 through August 23, 1977, the date on which trial is to proceed, 257 days are thus excluded, leaving a balance of but 163 days which would have elapsed for the purposes of the Act and the local rules. This calculation does not even take into account the mandated excludable time for the pendency of the instant motion, filed on July 21, 1977.

Defendant's attack on this calculation is essentially three-fold. He initially points to a letter written on August 24, 1976 by the Assistant United States Attorney formerly in charge of this case indicating that the case would have to be tried by the end of January 1977 in order to comport with the Act and local rules. However, that letter by its terms recognized that if a medical examination of Goldman were to be conducted, the applicable speedy trial provisions would be tolled; and indeed such an examination was directed shortly thereafter. This letter clearly does not help the defendant's position.

Defendant's second contention is directed at the excludable periods themselves. He argues that the speedy trial clock should not have been stopped for medical proceedings until January 13, 1977 when the doctors were appointed and examination by them ordered, and that, in any event, defendant at no time requested such an examination.

However, the record is clear that the examination was specifically directed on September 16, 1976; and nowhere in the statute is it required that such an examination be at the defendant's request.

Defendant also contends that the periods of excludable time must be considered concurrently and not consecutively, and that, in any event, a thirty-day period of exclusion is not mandated with respect to his prior motions since they were pending as of July 1, 1976, the effective date of the Act and local rules. However, that motion was actually "under advisement" within the meaning of § 3161(G) as of July 1, 1976, mandating a thirty-day period to August 1, 1976--a period during which the medical proceedings were not yet envisioned. To include this period simply because another later period must be excluded is nonsense. To say otherwise would be to grant a premium to those defendants with sufficient resources to delay a prompt and just trial--and by inference to deny that^{to} those who are unfortunately poor.

In any event, even were no exclusion mandated for that prior motion, clearly the speedy trial requirements were tolled on July 21, 1977 when the instant motion was filed, and the ^{twenty-six} days during which this motion has been "under advisement" must be excluded; thus, the trial is timely.

Defendant's third and final argument on the applicable time period consists of the contention that since it was not until July 22, 1977--25 days following my June 27, 1977 opinion directing the production of certain materials--that the government complied therewith, the August 23, 1977 trial date, anticipating immediate production, must be extended 25 days, thus propelling the case beyond the 180-day limit. This contention is a tidbit of twaddle and requires no discussion.

Turning to the requirements of the Sixth Amendment speedy trial guarantee, it is well established that in order to assess whether Goldman's rights were violated, all the relevant factors must be considered, particularly the length and reason for the delay, prejudice to the defendant, and the defendant's assertion of his rights. Barker v Wingo, 407 U.S. 514 (1972).

Although approximately twenty-nine months have elapsed between indictment and trial, such a delay is not, in and of itself, unreasonable. See United States v Lane, Dkt. No. 77-1082 (2d Cir. Aug. 8, 1977) (five-year delay); United States v Mejias, 552 F.2d 435 (2d Cir. 1977) (20-month delay); United States v Cyphers, Dkt. No. 76-1131 (2d Cir. Feb. 8, 1977 (33-month delay); United States v Fasanaro, 471 F.2d 717 (2d Cir. 1973) (four-year delay). The reason for the delay was manifold and not attributable to the government or the court. Initially, defendant was granted a stay which lasted

some four or five months, at the end of which time, at my direction, defendant submitted his motion to dismiss, discovery and related requests and a further request to stay the action pending the determination of the state indictments. After the motion was submitted, although the defendant continued to besiege this Court with letters containing questionable authorities supposedly decisive of the case, Goldman underwent open heart surgery, and to insure that he would only be tried if physically able to stand trial, a medical examination and related hearing was conducted. At the end of the hearing, defendant's counsel vigorously opposed my setting a trial date while his motions were pending. Disposing of the complex motions and setting the case for trial occupied the remainder of the time, and when a trial date was finally set, defendant submitted the instant motion (something which had apparently been chosen as the ultimate defense tactic). This series of events, during which time matters of vital concern to the defendant were proceeding apace, could hardly be considered the cause of an excessive delay.

Defendant is correct in asserting that his first series of motions were pending from February 1976 until resolution in June 1977. However, he ignores the fact that contained in these papers was a request for a stay pending resolution of the state court proceedings, and that it was not until May 12, 1977 that defendant's counsel advised me of the

disposition of those cases. Instead, relying on United States v Vispi, 545 F.2d 328 (2d Cir. 1976), defendant claims that all of the delay is attributable to the pendency of these motions and that, therefore, dismissal of the indictment is mandated. I disagree.

Vispi, characterized by the Court of Appeals as a "simple misdemeanor case," in which a "simple discovery motion, which had been consented to except for one or two minor items" had been held sub judice for seventeen months, id. at 334, resulted in a seven and one-half hour trial some fourteen months after the resolution of that motion. Vispi had vigorously asserted his speedy trial rights and had suffered severe prejudice by the delay. Under those circumstances, a constitutional violation was found. Here, however, aside from the causes of delay already enumerated which were not present in Vispi, the instant indictment charges a complex and sophisticated conspiracy and forty-three substantive counts. Goldman's prior motion papers were voluminous; both his and the government's submissions comprised hundreds of pages and presented several difficult issues. That Vispi presented an entirely different case is manifest. Its total holding is absolutely inapposite.

Moreover, here it was not until the conclusion of the medical hearing on April 29, 1977 that defendant mentioned speedy trial requirements, and that reference notwithstanding, defendant continually opposed the setting

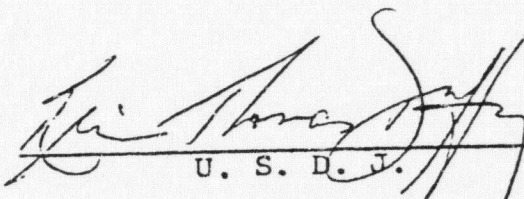
of a trial date (and still does). His speedy trial rights were not formally asserted until June 23, 1977 when, in response to my recognition of the speedy trial strictures, defendant made known his intention to file the instant motion; and indeed^{mentioned} other motions the basis and contents of which were left entirely unclear; yet, it was not until almost one month later that the instant motion was made. (I am not holding that this period was inordinate--but I must note that the period was highly unusual.)

As for the factor of prejudice, Goldman asserts that the delay has subjected him to extended anxiety, both for the months this indictment has been pending and prior to that time, as a result of the coverage in the press, although minimal and easily forgotten, during the period leading to his federal and state indictments. That he has suffered is perhaps a valid claim; however, in passing I note that both state indictments against him were dismissed, and he has not been subject to incarceration. While I recognize his claim, I also must note that he can allege no real prejudice as a result of his operation, which he claims has diminished his ability to vigorously defend himself. This assertion is an interesting one, because it was precisely because of this operation that substantial delay was engendered to allow for a medical examination and hearing--delay which he now claims caused him anxiety. It was precisely out of my concern, as a feeling human being, that he might be unable to properly defend himself that I ordered the examination,

and held the hearing; and it was the great reluctance on defendant's part engendered in part by trial tactics that he proceeded to the examination in the first place. Under these circumstances, and balancing all the factors, I must conclude that defendant's Sixth Amendment speedy trial rights have in no way been violated.

Defendant's motion to dismiss the indictment on the grounds that he has been denied a speedy trial is denied.

IT IS SO ORDERED.


U. S. D. J.

Dated: New York, New York

August 16, 1977.

TRANSCRIPT OF TRIAL BEFORE HON. KEVIN THOMAS DUFFY
AND A JURY

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1 3 rqr 85 J. Zander-direct

2 J A C K Z A N D E P, called as a witness on behalf
3 of the government, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STRAUSS:

7 Q Mr. Zanser, where were you born?

8 A I was born in Poland.

9 Q When did you come to this country?

10 A When I was about two or three years old.

11 Q Where did you grow up?

12 A I grew up in Buffalo, New York.

13 Q Where have you lived and worked ever since?

14 A In Buffalo, New York.

15 Q What is your educational background?

16 A I graduated high school.

17 Q What did you do after high school?

18 A For a few months I worked in a wholesale
19 drycleaning plant and then after that I worked for
20 a wholesale ring jobber. I worked at the wholesale
21 ring jobber for about five or six years, until February
22 of 1942, at which time I was inducted into the Army.

23 Q What was your ultimate status with the
24 U.S. Military Service?

25 Q I was a cryptographer and honorably discharged.

1 4 rabr 86 J.Zander-direct

2 Q What did you do after you got out of the
3 military service?

4 A I joined Sportservice about three or four
5 weeks after I got out of the Army.

6 Q For how many years did you work for Sportservice?

7 A About thirty years.

8 Q Where are Sportservice's headquarters?

9 A In Buffalo, New York.

10 Q What is the nature of Sportservice's business?

11 A They are in the concession business and
12 to some extent in the advertising business. To define
13 it more complete, the concession business is the catering
14 to the public in various type of generally sporting type
15 events, such as baseball parks, arenas, auditoriums,
16 race tracks. Also at airports where they have the
17 privileges of the food and sometimes if novelties are sold
18 they might have novelties and other such items of that
19 nature.

20 Q Who was the owner of Sportservice when you first
21 began to work them?

22 A It was owned by the three Jacobs brothers,
23 namely, Marvin, Charley and Louis Jacobs.

24 Q In 1968 did that change?

25 A Yes.

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2 Q How did it change, sir?

3 A In 1968 -- well, Charley Jacobs died in
4 February of 1968 and Louis Jacobs died in August of '68.
5 When Louis Jacobs died, then his son, Jeremy Jacobs, took
6 over as chief operating officer and president.

7 Q Who became the owners of the company at that
8 time?

9 A The actual stockholders primarily were the
10 six children of Louis Jacobs.

11 Q And who were they?

12 A They were Max Jacobs, Jerry Jacobs, Larry
13 Jacobs. And the three daughters' names were Jennifer --
14 and I am not sure what the other two names were because
15 they were totally inactive.

16 The agreement actually was that the three
17 boys had the rights of operation where those rights were
18 not among the girls.

19 Q Who are the present owners of the company?

20 A The present owners of the company now are
21 the three Jacobs Brothers who were the sons of Louis
22 Jacobs. Primarily Jacobs, Max Jacobs and Jerry Jacobs.

23 Q What were your duties at Sportservice when you
24 first started with the company?

25 When I first started I did items more of a

1 6 rghr 88 J. Zander-direct
2 clerical nature. I calculated salesmen's advertising
3 statements, figuring their commissions. That was
4 primarily the type of work that I did.

5 Q What positions did you later attain in the
6 company?

7 A I later became a vice president of Sportservice
8 Corporation.

9 Q Approximately when was that?

10 A I believe that was in the early sixties.

11 Q Subsequent to that?

12 A Subsequent to that I became president of
13 Sportservice Corporation.

14 Q In what year was that, sir?

15 Q That I believe was in 1973.

16 Q When did you resign from the company?

17 A I resigned -- you mean my official position
18 as president?

19 Q Yes.

20 A I resigned from that position in April of 1975.

21 Q When did you actually leave the company?

22 A At the end of November of 1975.

23 Q What was the relationship between Sportservice
24 and Emprise?

25 A Emprise was the -- was actually the stock-

1 7 mabr 89 J. Zander-direct
2 holder -- the owner of Sportservice. Sportservice was
3 a subsidiary of Emprise.

4 Q And the stock of Emprise was held by who?

5 A The stock of Emprise was held by the three --
6 well, I'd have to go a step back.

7 Originally the stock of Emprise was held
8 by the three boys and the three girls. Subsequently
9 the three boys bought out the three girls so that currently
10 the stock is owned by the three boys.

11 Q What if any connection did you ever have with
12 Emprise?

13 A Well, I had no actual connection with Emprise.

14 Q Until 1968 whom did you report in Sportservice?

15 A To Louis Jacobs.

16 Q What was the nature of your relationship with
17 him?

18 A I was his assistant.

19 Q How frequently did you confer with him?

20 A On urgent matters I would refer on a daily
21 basis. If they were not urgent matters I would refer --
22 I would confer with him once a week. Once a week I got
23 together with Mr. Jacobs, generally about 6 or 7 o'clock
24 in the evening, and I was with him until about midnight.
25 I did that continuously for perhaps in excess of 20 years.

1 8 mabr 90 J.Zander-direct

2 Q You have already testified that Mr. Louis
3 Jacobs died in August of 1968.

4 A Yes.

5 Q To whom did you report after Mr. Louis Jacobs
6 died?

7 A To his -- to Jerry Jacobs.

8 Q What was Jerry Jacobs' position in the
9 company after Louis Jacobs died?

10 A He became president of Sportservice.

11 Q And you at that time were vice president?

12 A Yes, I was.

13 Q When did you first have any contact with a
14 company called Interborough News?

15 A My first contact with Interborough News I believe
16 was in the latter part of 1963 or the early part of 1964.

17 Q What happened at that time?

18 A Interborough News had been acquired through
19 acquisition by Sportservice.

20 Q Mr. Zander, could you speak into the
21 microphone. It is a little hard to hear.

22 A Interborough News had been acquired by acquisition
23 by purchase by Sportservice.

24 Q What responsibilities did you assume in
25 connection with Interborough News?

1 9 rqr91 J.Zander-direct

2 A I assume the responsibility of overall
3 management operating from Buffalo, New York.

4 Q What official titles did you have with
5 Interborough News?

6 A Initially I didn't have any official title.
7 At a later point in time I became vice president.

8 Q What was the nature of the business of Inter-
9 borough News Company?

10 A Interborough News Company had all of the coin
11 operated vending machines in the subway, which consisted
12 of candy, gum. They had the weight machines, scales,
13 novelty machines. The only machines that Interborough
14 News actually didn't have, which other companies had,
15 were drinking machines.

16 Q What was the relationship between Interborough
17 News and the Transit Authority?

18 A Well, the Transit Authority was regarded by us
19 as the landlord. We were the tenant.

20 Q What if anything did you pay the Transit
21 Authority in consideration for the privilege of having
22 vending machines in the subways?

23 A We paid them a rental percentage.

24 Q What percentage was that, sir?

25 A That was primarily 20 percent.

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2 Q Of what?

3 A Of the gross sales.

4 Q Who actually ran the day-to-day operations of
5 Interborough News?

6 A Mr. Lynch.

7 Q What role did you play in the operations of the
8 company?

9 A Well, I was the general overseer of the
10 operations and in addition would have the responsibility
11 of any coordination that may be required with the Transit
12 Authority.

13 Q Who did you deal with at the Transit Authority,
14 primarily?

15 A Mr. Wasserberger.

16 Q About how frequently did you have occasion
17 to see him during the period of time that you were in
18 charge of Interborough News?

19 A Over the entire period? Oh, perhaps 25,
20 30 times.

21 Q Was there anyone else at the Transit Authority
22 who you spoke to on that frequent a basis during the
23 time that you ran Interborough News?

24 A No.

25 Q Did you know Mr. Wasserberger before you began

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2 meeting with him in connection with the Interborough
3 News Company?

4 A No.

5 Q Mr. Zander, did there come a time when you
6 met the defendant Irving Goldman?

7 A Yes.

8 Q Can you identify him here in court today?

9 A Yes.

10 Q Would you describe him, please.

11 A He is wearing a gray suit and blue and white
12 tie and a blue shirt.

13 MR. STRAUSS: Your Honor, may the record
14 reflect that the witness has identified the defendant?

15 THE COURT: Yes.

16 Q When did you meet Irving Goldman?

17 A I met Irving Goldman I believe in the early
18 part of 1964.

19 Q How did it come about, Mr. Zander?

20 A Mr. Goldman was an associate of a company
21 that I believe was Hegeman & Harris. We had the
22 concession rights of a group of stands called
23 International Plaza at the World's Fair where we were the
24 tenant and I believe the company was referred to as Hegeman
25 & Harris was the landlord. It was a normal concession

1 rqbr 94 J.Zander-direct
2 type of agreement where we paid a rental on gross sales
3 to that company. It was in that course of time that
4 I was introduced to Mr. Goldman by I believe a Mr. Kagan,
5 who is also connected with Hegeman & Harris, who I had
6 met earlier.

7 Q What was Mr. Kagan's relationship to Hegeman
8 & Harris?

9 A I believe he was the president of Hegeman &
10 Harris.

11 Q And what was Mr. Goldman's relationship to
12 Hegeman & Harris?

13 A I am not certain exactly what his capacity
14 was or what his financial interest was. I am not
15 certain of that.

16 Q During your business dealings with Hegeman &
17 Harris when you met Mr. Goldman at the World's Fair,
18 did you have a discussion with Mr. Goldman about
19 Interborough News?

20 A Yes.

21 Q What year was this in, sir?

22 A This was in early 1964, I believe.

23 Q What did the discussion take place?

24 A At the World's Fair.

25 Q Who else was present?

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J.Zander-direct

2 A At that particular time I think it was just
3 Irving and myself.

4 Q What did you say to him and what did he say
5 to you on that occasion?

6 A We had been talking generally and Mr. Goldman
7 as asking what -- I had mentioned that I had to go into
8 New York because it was as a common practice I went from the
9 airport I went usually to the World's Fair first because
10 that was close to the airport. I told him that I was
11 going into New York. We had certain businesses in
12 New York, I mentioned we acquired a company called
13 Interborough News which had the subway vending machines in
14 the subway.

15 I indicated that they were giving us a lot of
16 problems. It was not a particularly good arrangement
17 we had gotten into, and on top of those problems the
18 vending machines, which I was not familiar with the oper-
19 ation, I was having problems also with the Transit
20 Authority. Mr. Goldman then asked me "Who is your contact
21 at the Transit Authority?"

22 I told him Mr. Wasserberger.

23 He then told me that Mr. Wasserberger was a
24 very personal friend of his. I said "Gee, I didn't realize
25 that" and Mr. Goldman then suggested that the next time

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2 I come to New York, to let him, meaning Mr. Goldman,
3 know in advance and he would set up a meeting with
4 Mr. Wasserberger, Mr. Goldman and myself to see if
5 there was any particular problems or if we could just have
6 a general discussion. I said that sounded like
7 a good idea and I would do that.

8 Q What happened as a result of this conversa-
9 tion?

10 A The next time I had an occasion to go into
11 New York, which was perhaps three or four weeks later,
12 I called Mr. Goldman in advance of my coming in, told him
13 I was coming in, when I would be in and when he could arrange
14 the meeting he had suggested.

15 Mr. Goldman then advised me that he would get
16 back to me and let me know.

17 I then called him back later. I don't know
18 if it was that day or the next day. He then told me
19 it was confirmed for a meeting, I believe about 12:30
20 and I was to meet with him first at about noon and then
21 we would go down to Mr. Wasserberg's office.

22 Q What happened next as a result of that
23 conversation?

24 A When I got to New York I went to Mr. Goldman's
25 office and we proceeded to Mr. Wasserberger's office.

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2 I believe it was by subway.

3 Q Where was Mr. Goldman's office, Mr. Zander?

4 A At that time, I am not certain if he was on 8th
5 or 9th Avenue and then he moved to Washington Street.

6 At that time he was in the process of moving. I just
7 don't remember exactly when he moved so I would say it
8 was in whatever he was at that particular time because he
9 had moved from I believe -- I am not sure whether it was
10 8th Avenue or 9th Avenue to Washington Street.

11 Q After you left Mr. Goldman's office where did
12 you then go?

13 A We then went to Mr. Wasserberger's office,
14 which was in Brooklyn on Jay Street.

15 Q What happened there?

16 A Well, we just talked generally in his office
17 for just a few minutes and then we went out -- we went
18 to lunch.

19 Q Wheredid you go to lunch?

20 A We went to lunch in a restaurant right in
21 that area, about a block or two away.

22 I believe it was called Gage & Tollner.
23 We talked in generalities initially.

24 Q Who said what to whom to the extent that
25 you recall it, Mr. Zander?

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2 A Well, the thing I remember about the discussion--

3 THE COURT: Hold on just for a minute. Is
4 this going to take long, this discussion?

5 MR. STRAUSS: A couple of minutes, yes, your
6 Honor.

7 THE COURT: I thought it would.

8 I believe in being prompt in starting and
9 prompt in being with the jury on lunch hours, too.
10 I promised it was going to be 12:30 and it is going to be
11 12:30.

12 Have a good lunch.

13 (Jury left the courtroom.)

14 THE COURT: Give the jury a minute or two
15 to get out of the area and then go to lunch.

16 I will see you back here at 2 o'clock.

17 (Luncheon recess.)

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AFTERNOON SESSION2:10 p.m.

(In open court, jury present.)

J A C K Z A N D E R. resumed the stand

and testified further as follows:

CONTINUED DIRECT EXAMINATION

BY MS. STRAUSS:

Q Mr. Zander, before we broke for lunch, we were at a point where you were telling us about a meeting between yourself, Mr. Goldman and Mr. Seymour Wasserberger at the Gage & Tolner Restaurant in Brooklyn. I had asked you on that occasion who said what to whom.

A The general discussions were very light in nature. I do remember Mr. Wasserberger, in the course of discussions, saying to me, "Well, maybe you fellows from Buffalo aren't so bad after all."

In other portions of discussion he did refer to Mr. Goldman as his very good friend, and the fact that he didn't know I knew Mr. Goldman and that we were friends as well -- that is Mr. Goldman and myself.

It was a different type of meeting than previous meetings I had held.

MR. FRIEDMAN: If your Honor please, I object.

THE COURT: That is stricken, yes.

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J. Zander-direct

2 Ladies and gentlemen, when something is stricken,
3 it means you are not to consider it.

4 Q Is there anything else you remember about the
5 conversation on that occasion?

6 A No.

7 Q Do you remember anything that Mr. Goldman said
8 on that occasion?

9 A He did say, but I am not sure if it was on
10 that occasion or another occasion, if I may say so -- he
11 did say that he was a participant to some extent in
12 business with Sportservice through the Worlds Fair, indicating
13 he had an interest in the Worlds Fair operations, of which
14 we were a concessionaire.

15 Q Generally what if any additional meetings did
16 you have with Mr. Goldman and Mr. Wasserberger around
17 this period of time, 1964, 1965?

18 A We had a number of meetings. In almost all
19 the cases they were luncheon meetings. Perhaps every couple
20 of months.

21 Q At whose suggestion, Mr. Zander?

22 A It was generally at the suggestion of Mr.
23 Goldman. Mr. Goldman determined when he felt it was in
24 order to get together with Mr. Wasserberger.

25 Q During these meetings what if anything did

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J. Zander-direct

Mr. Goldman tell Mr. Wasserberger about his, Mr. Goldman's, relationship to Interborough News?

A Mr. Goldman indicated he had an interest in Interborough News and that if Interborough News was hurt he would be hurt as well.

Q At the point in time when Mr. Goldman told that to Mr. Wasserberger was it true?

A No.

Q Did Mr. Goldman tell you why he told that to Mr. Wasserberger?

A Yes.

Q What did he tell you?

A Mr. Goldman told me that if Mr. Wasserberger felt that he, Mr. Goldman, had an interest in Interborough News, it would be much better for Interborough News.

MR. FRIEDMAN: If your Honor please, may I approach the bench?

THE COURT: Yes.

(In the robing room.)

MR. FRIEDMAN: If your Honor please, we have an indictment here which charges the formation of a conspiracy in 1967. I don't believe there is a word in the indictment about acts involving the defendant before 1967. In the same way as on the opening yesterday,

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rgrf 4

J. Zander-direct

Ms. Strauss for the first time, as part of her purported direct case, is now referring to the Worlds Fair, activities in 1964. We now find that this man on direct testimony, the witness is being asked about events in 1964 and 1965, and statements are being procured from him to the effect that he said something to Mr. Wasserberger and it was a lie. I say to your Honor it is clearly prejudicial, it is clearly outside the scope of the charge which is laid in this case.

If the government thinks it is going to try to buttress that charge in going back to further ancient history by dragging out on its direct case other instances of lies, as they did yesterday as your Honor will recall with reference to the City Investigations Commissioner and an alleged lie that was made there -- I think it is highly prejudicial and I think it is highly improper. I think it ought to be stopped and I think it has caused mischief in this record.

THE COURT: I don't think so.

(In open court.)

Q Mr. Zander, during this same time period, what if anything did Mr. Goldman tell you about the background of his friendship with Mr. Wasserberger?

A Mr. Goldman told me that he had known Mr.

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1 rgrf 5

J. Zander-direct

2 Wasserberger for a very long time and that he, as a
3 matter of fact, had helped in getting Mr. Wasserberger
4 his present position.

5 Q And what was Mr. Wasserberger's position at that
6 time?

7 A He was Director of Concessions for the Transit
8 Authority.

9 Q Did there come a time when Mr. Goldman
10 expressed an interest in doing business with Interborough
11 News?

12 A Yes.

13 Q When was that?

14 A I believe that was sometime in 1966.

15 Q What was the business proposition that he presented
16 to you at that time?

17 A He advised me that he, together with a couple of
18 associates, were going to form a company called United
19 States Candy Company and one of his associates was experienced
20 and had the background of purchasing candy as a candy
21 jobber, but purchasing what is referred to as odd lot
22 candy or surplus candy that is purchased at a discount
23 price from the normal price.

24 He told me that that type of candy would fit
25 into our operation in the machines.

1 rgrf 6

J. Zander-direct

2 Q What specifically did he want United States
3 Candy to do in relation to Interborough News?

4 A He wanted Interborough News to purchase such
5 candy from United States Candy Company.

6 Q And what did you tell Mr. Goldman in response
7 to this proposition?

8 A I told him that that was okay and I proceeded
9 to acquaint Mr. Lynch with that fact.

10 Q Shortly thereafter did Mr. Goldman come to you
11 with a second business proposition connected to United
12 States Candy?

13 A Yes.

14 Q And what was that?

15 A He had -- Mr. Goldman had contracted with some
16 company whereby -- or was in the position to contract with
17 some company, I don't know whether he had, but he was
18 in a position to contract with some company whereby he,
19 meaning United State Candy Company, would provide potato
20 chip machines for Interborough News without charge in
21 consideration of Interborough News purchasing potato chips
22 from United States Candy.

23 Q What response did you give Mr. Goldman with
24 respect to this business proposition?

25 A I advised Mr. Goldman that that sounded good,

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rgrf 7

J. Zander-direct

but I said we would have to clear this with Mr. Wasserberger because it represented a different type of item and it was the normal procedure to get approval for that.

Q Was there any problem with that subsequently?

A No.

Q At this period of time, 1966, who in Sportservice were you reporting to?

A I was reporting to Mr. Louis Jacobs.

Q What if any report did you make to Mr. Louis Jacobs about these matters?

A I did relat to Mr. Jacobs the arrangement about the potato chips as being -- a company called United States Candy had gotten -- that we were going to deal with a company called United States Candy on potato chips and I was very enthused about it at the time because the agreement called for an initially one or 200 machines and eventually 1,500. I thought this might be a shot in the arm to the vending machine business in the subways.

Q How long did United States Candy do business with Interborough News?

First let's talk as to the odd lot candies.

A For the odd lot candy?

Q Let's take the odd lot candies first. How long did United States Candy Company do business with Interborough with respect to the odd lot candies?

106
rgrf 8

J. Zander-direct

1 A Until the end of January of '67.

2 Q How long did Interborough News do business with
3 United States Candy with respect to the potato chips?

4 A Until 1972 or '73. It was a gradual deterioration
5 of the machines and the product.

6 Q Putting aside the potato chips which went along
7 through 1973, did there come a time when Interborough's
8 relationship with United States Candy changed?

9 A Repeat the question, please.

10 Q Did there come a time when Interborough
11 News' relationship to the United States Candy Company
12 changed?

13 A Yes.

14 Q When was that?

15 A That was about the first of February.

16 Q Of what year, Mr. Zander?

17 A Of 1967.

18 Q How did that come about?

19 A Mr. Goldman had called me and told me that he
20 was not satisfied with his associates in United States Candy.
21 He felt he didn't need them and that he would like all
22 candy business previously done through Interborough News
23 and United States Candy to be done with Interborough News
24 and a company called Jola Candy Company.
25

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rgrf 9

J. Zander-direct

1 Q What did you say to that?

2 A I told him that was okay with me.

3 Q Where did this conversation take place?

4 A This conversation was a phone conversation.

5 Q Where were you at the time?

6 A I was in Buffalo, New York.

7 Q After you agreed to this proposition what if
8 any instructions did you give to Mr. Lynch at Interborough
9 News in New York?
10

11 A At that time I just gave him that brief
12 instruction that whatever procedures he had been following
13 for United States Candy for the candy business, not the
14 potato chip business, but the candy business, he would divert
15 to the Jola Candy business. This meant that the billings
16 would be made out to the Jola Candy Company instead of
17 the United States Candy Company.

18 Q Within the following few weeks, did you have
19 occasion to have a further conversation with Mr. Goldman
20 about the Jola Candy Company?

21 A Yes.

22 Q Where did that conversation take place?

23 A It was very shortly after that phone conversation.
24 I am not sure if that was another phone conversation or
25 I may have been in New York, I am just not sure.

1 rgrf 10

J. Zander-direct

2 Q What did Mr. Goldman say to you on that occasion?

3 A On that occasion Mr. Goldman wanted to effect
4 greater profits for Jola.

5 Q What did he say to you, Mr. Zander?

6 A He said to me, "I'd like to get a couple of
7 your regular accounts to do business through Jola."

8 Q And what did you tell Mr. Goldman when he proposed
9 that?

10 A I told him I would agree to it.

11 Q What if any instructions did you then give to
12 Mr. Lynch at Interborough News in New York?

13 A I told Mr. Lynch that I wanted to give Mr.
14 Goldman through Jola Candy Company a couple of his better
15 accounts in order to -- and I recognized that that would
16 increase the Jola volume of business.

17 Q What if any specific instructions did you give
18 to Mr. Lynch as to how to go about doing this?

19 A Well, I had advised -- I had told him that --
20 he would order the merchandise the same as he normally did,
21 with the exception that he would advise the supplier
22 to bill it to Jola Candy Company for the normal price
23 that he paid and the candy company would bill it to Jola
24 for that same price.

25 Q Then what would happen after that?

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1 rgrf 11

J. Zander-direct

2 A Then Jola Candy Company would in turn bill
3 Interborough News for that same merchandise. The
4 merchandise was actually delivered to Interborough News,
5 but that same merchandise would then be billed by Jola
6 Candy Company to Interborough News at a higher price.

7 Q At this time period, February 1967, to whom
8 were you reporting at Sportservice?

9 A Mr. Louis Jacobs.

10 Q What if any report did you give to Mr. Louis
11 Jacobs about the fact that you had set up this procedure?

12 A I had acquainted Mr. Jacobs with the fact that
13 United States -- that we were going to do business with
14 Jola Candy Company instead of United States Candy at the
15 request of Mr. Goldman and I wanted to do that for him
16 and he said -- he said there was nothing wrong with that.

17 Q Did you tell him anything more than that, Mr.
18 Zander?

19 A No, sir. No, Miss.

20 Q Directing your attention to lage 1967, 10, 11
21 months later, did you have a conversation with Mr.
22 Goldman about Jola's business with Interborough News
23 at that time?

24 A Yes.

25 Q Where did that conversation take place?

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rgrf 12

J. Zander-direct

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A I believe that took place in Manhattan, in New
York.

Q Do you recall where in Manhattan?

A I believe that was on Washington Street.

(Continued on the next page.)

1 1 rqbr 113 J. Zander-direct

1b pm

2 Q Mr. Goldman's office?

3 A Yes.

4 Q Who else was present at that time?

5 A No one.

6 Q What did Mr. Goldman say to you on that
7 occasion and what did you say to him?

8 A Mr. Goldman again asked for additional
9 accounts that could be -- that Interborough News could
10 reinstruct for billing to Jola as he had those initial
11 accounts that I have explained and he also at that
12 time indicated to me that if we could do something
13 like this he would like to work out something that would
14 benefit me personally financially.

15 Q What did you tell him in response to that
16 proposition?

17 A I told him that I certainly had no objection
18 to making extra money, but I was concerned with the hazards
19 of being found out and it would be something that I would
20 not want to think about, but in the meantime I told
21 him I would advise Mr. Lynch to endeavor to increase Mr.
22 Goldman -- or Jola Candy Company business.

23 Q What if anything did you then tell Mr. Lynch?

24 A I gave that instruction to Mr. Lynch and he
25 had been -- he was not happy about the procedure.

1 2 rqr 114

J. Zander-direct

2 MR. FRIEDMAN: If your Honor please,
3 I object.

4 THE COURT: Yes, sustained. Reframe your
5 question.

6 Q What did you tell Mr. Lynch to do at that
7 time?

8 A I told Mr. Lunch to work out some additional
9 accounts for Jola Candy Company.

10 Q What else did you tell him at that time about
11 why you were setting up this arrangement?

12 A I told him -- I didn't tell him anything. It
13 was as a result of his inquiry to me. May I state that?

14 THE COURT: Yes.

15 Q Yes. What did you then tell him as a result
16 of his inquiry to you?

17 A As a result of his inquiry to me I told
18 him not to be concerned that Interborough News profits
19 were lessened by this procedure; that for the overall
20 picture of Sportservice it didn't hurt.

21 Q What other things over the period --

22 A I also told him that it was helping public
23 relations of Interborough News and the Transit Authority.

24 Q Around late 1967 how did Mr. Goldman's
25 relationship to Interborough News change?

1 3 rqr 115 T. Zander-direct

2 A He became an officer of Interborough News.

3 Q What offices did he assume?

4 A Vice president.

5 Q How did that come about?

6 A Mr. Goldman had been suggesting that previously,
7 and advising me that it would be to the advantage of
8 Interborough News, that if he were an officer, it would
9 make him a more substantial figure for Interborough
10 News.

11 Q What if anything did you do to accomplish
12 this purpose?

13 A I arranged for his becoming a vice president
14 in our offices in Buffalo, New York.

15 Q What were the procedures in Buffalo for having
16 someone assume an office such as this?

17 A I am not totally certain of the procedures.
18 These are handled by our legal and contract department.
19 They draw up minutes, but one of the procedures I am
20 familiar with is the fact -- at that time, it is no
21 longer a procedure, but whenever anyone became an officer
22 or a director, at the same time they were requested to
23 sign a resignation undated and that was a procedure
24 I know that we used in the case of Mr. Goldman, but it was
25 a normal procedure.

1 r0br 116 J.Zander-direct

2 MR. FRIEDMAN: If your Honor please, I move
3 that be stricken. It is responsive to no question
4 that was asked.

5 THE COURT: Yes, I agree with you.

6 All right, that last part, forget about it.

7 O Showing you Government's Exhibits 53-A and
8 53-B, can you identify these documents?

9 A Yes.

10 O What do you identify them to be?

11 A Those are documents --

12 (Pause.)

13 O Mr. Zander, what do you identify those exhibits,
14 Government's Exhibits 53-A and 53-B to be?

15 A 53-B is the document of Mr. Goldman tendering
16 resignation as director of Interborough News. Exhibit 53-A
17 is a document where Mr. Goldman tenders resignation as
18 vice president of Interborough News.

19 O How were those documents obtained?

20 A These documents were prepared approximately around
21 the same time he became an officer, which was in late
22 1967. They were prepared in Buffalo and they were given
23 to me to take with me the next time I came to New York,
24 which I did, and I had Mr. Goldman sign them at that time.

25 MR. STRAUSS: The government offers 53-A and

1 rqr 117 J. Zander-direct

2 53-B.

3 THE COURT: Any objection?

4 MR. FRIEDMAN: No objection, Judge.

5 THE COURT: Okay, received.

xxx

6 (Government's Exhibits 53-A and 53-B were
7 received in evidence.)

8 MR. STRAUSS: Your Honor, may we circulate these
9 to the jury?

10 THE COURT: First me.

11 (Pause.)

12 THE COURT: Mr. Zander, these documents, are they
13 normally prepared for people appointed as vice presidents
14 or officers or directors of subsidiaries of the various
15 Sportservice groups?

16 THE WITNESS: Yes, your Honor. That was the
17 procedure at that time.

18 THE COURT: So everybody had to do it?

19 THE WITNESS: Yes.

20 THE COURT: In fact, they even had yours on
21 file?

22 THE WITNESS: Yes.

23 THE COURT: Sure.

24 (Government's Exhibits 53-A and 53-B handed
25 to the jury.)

1 rghr 118 J.Zander-direct

2 Q Mr. Zander, referring back to your testimony
3 about the late 1967 conversation with Mr. Goldman where he
4 suggested that you might have this be financially worth-
5 while to you. When did you next talk to Mr. Goldman
6 about your sharing in the moneys made by the Jola Candy
7 Company?

8 MR. FRIEDMAN: If your Honor please,
9 I object.

10 THE COURT: Yes. Let's stop the leading,
11 all right?

12 When is the next time you talked with Mr.
13 Goldman about the Jola Candy Company period. Do you
14 know?

15 THE WITNESS: I talked to him on a number
16 of occasions about Jola Candy Company just generally.
17 I don't recall any specific -- on that level I do recall
18 a specific thing that could affect -- that was going to
19 possibly affect Jola Candy Company.

20 THE COURT: What was that?

21 THE WITNESS: That was in -- I believe
22 it was in mid 1968.

23 THE COURT: Where was the conversation held?

24 THE WITNESS: In New York.

25 THE COURT: Do you know where in Manhattan?

1 rqr 119

J.Zander-direct

2 THE WITNESS: In his office.

3 THE COURT: Do you recall who said what to
4 whim?

5 THE WITNESS: Yes. I told Mr. Goldman that
6 the agreement that we had with the Transit Authority had
7 an option in it where either party could discontinue as
8 of January 31, 1969 and the operations were just going
9 fair. They were marginal, but recognizing that union rates
10 were going to be increasing because union contracts were
11 coming up, that there would be substantial increases in the
12 costs. I wasn't completely certain in my mind whether
13 we were going to continue it. There was a possibility
14 that we could discontinue it.

15 THE COURT: That's what you said to him, is
16 that right?

17 THE WITNESS: Yes.

18 THE COURT: All right. What did he say
19 to you?

20 THE WITNESS: He said "Jack, let's not discontinue
21 this. I want to again bring up the fact that I have
22 got some idea on how you can participate in this without
23 hazard."

24 I asked him just what he had in mind and at
25 that time he explained to me that Jola Candy Company,

1 rqrbr 120

J.Zander-direct

2 the actual sole stockholder of Jola Candy Company at that
3 time was his daughter and that he planned on putting his
4 other daughter on as an additional stockholder.

5 What he wanted to do is add to that my two
6 children as stockholders and in that way the four -- as he
7 put, the four kids could have something for the future.

8 Q What did you say to Mr. Goldman in response
9 to that, Mr. Zander?

10 A I told him that it sounded okay. I wanted
11 to think about it in the meantime, but I would do nothing
12 to discontinue the agreement.

13 Q What agreement are you referring to?

14 A That I would do nothing -- I would take no
15 action to discontinue our agreement -- Interborough
16 News agreement with the Transit Authority. By taking no
17 action, it meant automatic continuation.

18 Q Around the same period of time what if anything
19 did you do in connection with your expectation that you
20 might get involved in the sharing of profits from Jola?

21 MR. FRIEDMAN: If your Honor please, I
22 object.

23 MR. STRAUSS: Your Honor, I don't think it is
24 improper to introduce a new topic with a question that
25 introduces a topic. I think that's proper.

1 rqr 121

J. Zander-direct

2 THE COURT: I don't think either one of you are
3 going to keep this up.

4 The objection is overruled, go ahead. Let's
5 hear the question.

6 A Could you repeat the question.

7 O Mr. Zander, around the same time what if
8 anything did you do to prepare to share in the moneys
9 of Jola?

10 A Prior to Mr. Goldman's suggestion I had given
11 thought to the proposal that had been made in my mind for
12 quite some time. I had thought of a vehicle that I felt
13 was relatively safe and that was to form a corporation,
14 a New York corporation which, if I had decided to work into
15 Jola, I would maybe work it through that by having that
16 corporation own a certain amount of shares of the stock
17 of Jola.

18 O What if any use did you ever make of that
19 corporation?

20 MR. FRIEDMAN: Your Honor, I object to
21 that.

22 THE COURT: Wait a second. First of all,
23 he said he thought about it.

24 MR. STRAUSS: I am sorry.

25 THE COURT: That's as far as it went.

1 rqbr 122 J.Zander-direct

2 Q What did you do, Mr. Zander?

3 A I did eventually form such a corporation.

4 Q And what if any use did you make of it?

5 A I opened up a safety deposit box in the name of
6 that corporation.

7 THE COURT: Anything else?

8 THE WITNESS: No.

9 Q In September of 1968 what was the status of
10 Interborough's contract with the Transit Authority?

11 A In September 1968?

12 Q September 1968.

13 A In September 1968, that was the time when
14 the contract would automatically continue for an additional
15 five years if neither party gave notice.

16 Q Showing you Government's Exhibit 50 --

17 THE COURT: Can I see this exhibit, please?

18 (Pause.)

19 THE COURT: Go ahead.

20 Q Showing you Government's Exhibit 50, can you
21 identify that document, Mr. Zander?

22 A Yes. This was an amendment to our current
23 agreement that was drawn primarily to make the language
24 of the original agreement more understandable. Both the
25 Transit Authority and Interborough -- myself representing

1 rqr 123 J.Zander-direct

2 Interborough agreed that the language was very difficult
3 to fully comprehend and we made it simpler.

4 Q Who signed that agreement on behalf of
5 Interborough News?

6 A I signed that agreement as president and
7 Irving Goldman signed as vice president.

8 MR. STRAUSS: We offer Government's Exhibit 50
9 into evidence.

10 MR. FRIEDMAN: No objection.

11 (Government's Exhibit 50 was received in
12 evidence.)

13 Q Mr. Zander, directing your attention to the
14 fall of 1968, what if any further discussion did you have
15 with Mr. Goldman about Interborough News at that time?

16 A Mr. Goldman was wanting to further -- still
17 continue to increase business and get more accounts.
18 I told him that I didn't feel we could increase it to
19 any greater degree without arousing some possible
20 deduction on the part of Sportservice that there might be
21 something not quite right.

22 Mr. Goldman also wanted to have the prices --
23 the differential between the prices that the candy
24 manufacturer billed to Jola and then Jola in turn billing
25 to Interborough to be increased a greater profit could be

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1 rqbr 124 J. Zander-direct

2 made by Jola. I told Mr. Goldman again that we had
3 to be careful on certain items, that they do not exceed
4 more than 50 percent of the selling price. That the
5 merchandise does not exceed 50 percent because that could
6 alert our staff.

7 So if a piece off candy cost 10 cents, Jola could
8 not bill us for more than five cents for it without
9 creating some possible hazard of questioning why we were
10 buying at such high prices.

11 Q Mr. Zander, when did your children begin to
12 participate in the distribution from the Jola Candy
13 Company?

14 MP. FRIEDMAN: If your Honor please, I object.

15 THE COURT: Yes. Let's take it step-by-
16 step. Did there ever come a time when your children
17 became stockholders in the Jola Candy Company?

18 A Yes.

19 Q When was that, Mr. Zander?

20 A I believe that was in 1969.

21 Q How did it actually come about? What were
22 the steps that were taken that you were aware of?

23 A There were papers sent to me for my children's
24 signature and I was given instructions by Mr. Sokolow
25 as to just how they should be filled out. It was a

1 rqrbr 125 J.Zander-direct
2 document of some type.

3 Q Who was Mr. Sokolow?

4 A Mr. Sokolow was the accountant for Mr. Goldman.

5 Q What happened after this step where the forms
6 were filled out?

7 A I sent them to Mr. Goldman or Mr. Sokolow,
8 I don't remember, but I sent them back to New York to either
9 one of them. I don't remember exactly who. Whatever
10 instructions that he gave at the time I followed.

11 Q When did your children begin to receive
12 checks from the Jola Candy Company?

13 A In December 1969.
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1 mbbr 126 J.Zander-direct

2a pm 2 Q Mr. Zander, showing you what has been marked
3 as Government's Exhibits 8 through 16 for identification,
4 can you identify each of those exhibits?

5 A Yes, I can.

6 Q What do you identify them to be?

7 A They are checks to either Robin L. Zander or
8 Brian Zander.

9 Q How did you receive those checks, Mr. Zander?

10 A They were received in the mail at my home, at
11 30 New Amsterdam, in Buffalo, New York.

12 MR. STRAUSS: The government offers Exhibits
13 8 through 16.

14 MR. FRIEDMAN: No objection.

15 THE COURT: Mark them in evidence.

16 (Government Exhibits 8 through 16 were
17 received in evidence.)

18 Q Mr. Zander, showing you Government's Exhibits
19 45-H, 45-I, 45-L, 45-M, 45-R, 45-S, 45-T, 45-U, 45-QQ and
20 45-RR, can you identify those exhibits?

21 A Yes. These are checks made out to either
22 Robin Zander or Brian Zander.

23 Q That you received?

24 A That I received in the mail at my home.

25 MR. STRAUSS: Government offers those exhibits.

1 mbbr 127

J.Zander-direct

2 THE COURT: Any objection, counsel?

3 MR. FRIEDMAN: No objection, your Honor.

4 THE COURT: All right. Mark them in
5 evidence.

6 MR. STPAULS: Your Honor, may we take a mo-
7 ment to have the jury examine one of the checks so they can
8 see what it is we are looking at here?

9 THE COURT: Sure.

10 (Government's Exhibits 45-U, 45-T, 45-S, 45-R,
11 45-M, 45-L, 45-I, 45-H, 45-RR, 45-QQ were received
12 in evidence.

13 (Checks handed to the jury.)

14 THE COURT: All right. Proceed, Mr. Strauss.

15 Q Mr. Zander, after the point in time when you
16 reached your agreement to have your children receive this
17 money, how did that change your actions in running Inter-
18 borough News?

19 MR. FRIEDMAN: If your Honor please, I object.

20 THE COURT: Yes. What if anything did you do?
21 That's fine. Go ahead.

22 Q What if anything did you do, Mr. Zander, that
23 altered your actions in running Interborough News?

24 THE COURT: All right, go ahead. Answer
25 it.

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1 mbbr 128 J.Zander-direct

2 MR. STRAUSS: I can't ask him what if any-
3 thing he did in running Interborough News.

4 THE COURT: Go ahead. What did you do?

5 A I made further arrangements through Mr. Lynch
6 to increase the business a little more.

7 THE COURT: Whatdo vou mean by a little more?

8 THE WITNESS: About double.

9 THE COURT: About double?

10 All right.

11 THE WITNESS: Over the course of -- in
12 other words, I don't know -- I could only be guided by --
13 I didn'tactually know the business that was being done.
14 I could only be guided by the profit shown on -- the only
15 statement that I received at the end of the year would
16 indicate that when my children started participating,
17 the profitability doubled -- a little more than doubled
18 or doubled, I guess.

19 Q Directing your attention to 1970, what
20 was happening in that year between the Transit Authority
21 and Interboro News?

22 A Interboro News was starting to suffer sub-
23 stantial losses. Things had gotten quite serious
24 because of a number of factors. No. 1, the attendance in
25 the subway, particularly in the evening, diminished

1 mbbr 129 J. Zander-direct

2 considerably because of fear.

3 THE COURT: Well, no. We know why. We ride
4 the subway.

5 A Also, that caused considerably increased
6 vandalism to the machines, which became quite expensive.
7 Also, by that time we had another union agreement that
8 increased the rates substantially.

9 All these factors caused Interborough News to
10 start having substantial losses.

11 Q And in 1970, Mr. Zander, what was happening
12 between the Transit Authority and Interborough News?

13 A We were -- we started -- well, I would have
14 to go back.

15 I first discussed this with Mr. Goldman,
16 and he suggested a meeting with the Transit Authority.

17 MR. FRIEDMAN: If your Honor please, I object.

18 THE COURT: I am at a loss. Now, look, this is
19 a very simple question. What was happening between
20 Interborough News and the Transit Authority during 1970?

21 THE WITNESS: Interborough News and the
22 Transit Authority started negotiating to get a reduction
23 of the rental.

24 Q Now what if any discussions did you have
25 with Mr. Goldman about this matter?

1 mbbr 130 J.Zander-direct

2 A I had covered this matter with Mr. Goldman,
3 and as a result we met with Mr. Wasserberger.
4 I stated my problems to him.

5 THE COURT: Hold on a moment. No. 1, you had
6 a conversation with Mr. Goldman? Is that your testimony?

7 THE WITNESS: The conversation I had with
8 Mr. Goldman was prior to the meetings -- to the first
9 negotiation meetings.

10 THE COURT: All right. When was that conver-
11 sation?

12 THE WITNESS: That conversation would have been
13 in the late, very late 1969.

14 THE COURT: All right. Where did the
15 conversation take place?

16 A I had mentioned it on the telephone and he
17 said "Well, the next time you come in, let's meet with
18 Mr. Wasserberger and tell him what our problem is of
19 Interborough News."

20 THE COURT: I see. That was the extent of your
21 conversation?

22 THE WITNESS: Yes.

23 THE COURT: All right, fine.

24 Now go ahead from there.

25 O What if any meetings did you have with

1 mbbr 131

J.Zander-direct

2 Mr. Wasserberger or other officials from the Transit
3 Authority on this issue?

4 A I had meetings with Mr. Wasserberger where
5 I outlined these problems -- the losses we were having.
6 He told me that it was not the policy of Transit --
7 of Transit Authority to have customers or tenants losing
8 money, and he suggested that I have certified profit and
9 loss statements drawn up by a large, reputable firm of
10 that type, and submit those so that --

11 THE COURT: Firm of what type?

12 THE WITNESS: The --

13 THE COURT: Auditing firm?

14 THE WITNESS: Auditing firm like --

15 THE COURT: Allright. I don't care. Go
16 ahead.

17 A I consequently did that, submitted all the
18 data.

19 O All right. Just a moment, Mr. Zander. Who
20 attended this meeting that you have just described?

21 A Mr. Goldman, myself, and Mr. Wasserberger,
22 and I believe that at one point in that discussion
23 he called in Mr. Goldstein, who was the auditor for the
24 Transit Authority.

25 O What steps did you then take to effect this

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2 proposal?

3 A I complied with his request by going back to
4 Buffalo and having the auditing firm, Peat, Marwick , Mitchell,
5 I believe it was, conduct this audit and draw up the
6 profit and loss statement and other data, and it was
7 then submitted to the Transit Authority.

8 Q What if any procedures did you then learn
9 about that the Transit Authority was undertaking to process
10 your request?

11 A They processed that information but there
12 was a subsequent, at a later date I submitted to them
13 a letter outlining the type of relief I wanted, that I felt
14 Interborough News should get, and citing the reasons,
15 and that became part of what was processed.

16 Q What relief did you request specifically?

17 A I requested rental to be reduced from 20
18 percent to 10 percent.

19 Q 20 percent of what to 10 percent of what?

20 A Of gross sales.

21 Q To 10 percent of gross sales?

22 A And my guarantee which was part of that
23 proposal be reduced as against percentage, be reduced
24 from \$300,000 a year to \$150,000 per year.

25 Q How did the Transit Authority go about

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2 evaluating the financial information that you submitted?

3 A They submitted it to their auditing depart-
4 ment.

5 Q What did the auditing department do?

6 A They -- what the auditing department of the
7 Transit Authority did?

8 Q Of the Transit Authority did with the informa-
9 tion.

10 A They processed it. I don't know exactly what
11 they did.

12 Q At a later point what if anything did you learn
13 about the steps they had taken to prepare to process your
14 request?

15 A They had reviewed -- they had reviewed it.
16 They had found that the losses indicates were as shown
17 but there was -- Mr. Goldman had called me at some time
18 during that period to --

19 MR. FRIEDMAN: If your Honor please, I object.

20 THE COURT: Yes. Answer the question that is
21 asked, not what you think is going to be asked next.
22 All right?

23 THE WITNESS: Sorry.

24 Q How did you learn about the steps the
25 Transit Authority took?

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2 A Mr. Goldman advised me.

3 Q What did he tell you?

4 A he told me that Goldstein had reviewed all
5 the reports.

6 (Continued on next page.)

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1 mbrf 2b pm 1 135 J. Zander-direct

2 Q Who is Mr. Goldstein?

3 A Mr. Goldstein was the auditor for the Transit
4 Authority.

5 Q Do you know what his full name was?

6 A No, I don't know his first name. I don't remember
7 his first name.

8 Q What did Mr. Goldman tell you on this occasion?

9 A That Mr. Goldstein found all -- everything in order
10 and he was in agreement -- he was in agreement that these --
11 that the relief seemed to be justified but he mentioned
12 to Mr. -- he mentioned to -- Mr. Goldman advised me
13 that Goldstein had mentioned the fact that in their
14 review they noted that some money could have been saved
15 by Interborough News if they had eliminated Jola Candy
16 Company.

17 Q What if anything did Mr. Goldman tell you with
18 respect to what he told Mr. Goldstein?

19 A I believe Mr. Goldman's comment to Mr. Goldstein
20 was, "Well, don't worry about it."

21 Q Around the time of these events when this
22 application for a rent reduction was being made, what
23 if any discussion did you have with Mr. Goldman about
24 Mr. Seymour Wasserberger?

25 A During those discussions Mr. Goldman had

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2 told me that if Interborough News was successful in
3 getting the rent reductions they were seeking, it would
4 be one of the -- it would be primarily the fact that
5 Mr. Wasserberger was helpful in accomplishing this,
6 and we should definitely show our appreciation and do some-
7 thing for Mr. Wasserberger.

8 Q Mr. Zander, where did that conversation take
9 place?

10 A That conversation took place in New York.

11 Q Do you know where in New York?

12 A I believe it would if -- it took place in
13 Mr. Goldman's office.

14 Q His office is where?

15 A On Washington Street.

16 Q Who else was present?

17 A No one else was present.

18 MR. FRIEDMAN: If your Honor please, may we
19 know when?

20 THE COURT: Yes. I expected that to be next.

21 Q Approximately when did the conversation take
22 place?

23 A I would say the conversation took place in the
24 middle of -- about the middle of the year.

25 Q And what year are you talking about?

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2 A Of 1970.

3 Q What action did the Transit Authority ultimately
4 take on your rent application?

5 A They ultimately approved it.

6 Q And what were the terms on which they approved
7 it?

8 A They approved it by reducing -- generally reducing
9 the rent from 20 percent to 10 percent.

10 Q How did that decision relate to what you had
11 requested?

12 A It coincided with my requests.

13 Q And when did that rent reduction go into effect?

14 A It went into effect retroactively to February 1,
15 1970.

16 Q How did this rent reduction translate into dollars
17 for Interborough News?

18 A Over the remaining four years of agreement it
19 would have translated into approximately \$600,000.

20 Q How did you learn that the rent reduction had
21 been granted?

22 A Mr. Goldman had called me, I believe it was the
23 first part of December, to tell me it had been granted
24 and that I would be getting official notification shortly.

25 Q Showing you Government's Exhibit 50-A for

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J. Zander-direct

2 identification, can you identify that document, Mr. Zander?

3 A Yes, this is the document that amends our
4 agreement effecting the rental reductions which I had
5 heretofore described.

6 Q And who signed that agreement on behalf of
7 Interborough News?

8 A Myself as president and Irving Goldman as secretary.

9 MS. STRAUSS: The government offers 50-A into
10 evidence.

11 THE COURT: Any objection?

12 MR. FRIEDMAN: No objection.

13 THE COURT: All right.

14 (Government's Exhibit 50-A received in
15 evidence.)

xx

16 Q Directing your attention, Mr. Zander, to December
17 1970 after the rent reduction was approved, did you
18 receive a telephone call from Mr. Goldman around that time?

19 MR. FRIEDMAN: If your Honor please, I object.

20 THE COURT: No, I will permit it.

21 Q Did you receive a telephone call from Mr. Goldman
22 around that time, Mr. Zander?

23 A Yes.

24 Q Where were you at the time?

25 A In Buffalo in my office.

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J. Zander-direct

2 Q What did you say to Mr. Goldman on that occasion
3 and what did he say to you?

4 A Mr. Goldman called me and told me that he wanted
5 to take care of --

6 THE COURT: Keep your voice up.

7 A He wanted to take care of our friend. He generally
8 used that phrase.

9 THE COURT: No. That's all he said, right?

10 THE WITNESS: Yes; our friend, and I said, "Yes,
11 I understand. What do you think it should be?"

12 And he indicated, Mr. Goldman said 5, and I says,
13 "Well, how will we handle it?"

14 And Mr. Goldman then said we could handle it
15 through Jola Candy Company by having Jola Candy Company
16 invoice Interborough or Sportservice Corporation for
17 \$7,500. That would cover the taxes that the children
18 would normally pay, and leave \$5,000 for his request.

19 Q What else did he say to you and what else
20 did you say to him to effectuate this?

21 A He told me that our friend was going away,
22 and he wanted to get the check right away because I
23 had told him to send me an invoice, normal procedure.
24 And he said, "Well, could you send the check before I
25 sent you the invoice so we could get it to him, so I could

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J. Zander-direct

2 take care of it?"

3 So I said, "Well, let me check and see what I
4 can do."

5 In the meantime I did discuss -- I discussed
6 with him how we would word the invoice, and he gave
7 me some ideas of the wording of the invoice which I made
8 rough notes of, and I then told him I would check
9 with the proper department and see what I could do about
10 getting the check to him.

11 Q More specifically, what was your discussion with
12 Mr. Goldman about the way the invoice would be worded?

13 A Well, Mr. Goldman had said that we could show that
14 Jola supervised the general display of machines, it
15 was general language of that type. And at the time I
16 made notes of it an. of that, and then worded it completely.
17 And I gave the wording to the proper person in the office
18 that would handle that. That was Mrs. --

19 Q Just before you go on, Mr. Zander, how did Mr.
20 Goldman generally refer to Seymour Wasserberger in
21 his discussions with you about him?

22 A He generally referred to Mr. Wasserberger as
23 either "Sy" or "Our friend," or "My friend." That
24 was generally how Mr. Goldman referred to Mr. Wasserberger,
25 particularly when we were talking together on the phone.

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J. Zander-direct

2 Sometimes he would say Sy but generally he would say
3 our friend; and that was generally the way it was referred.

4 Q After this conversation with Mr. Goldman, what
5 did you then do?

6 A I went to the proper person, gave her the --
7 I had refined the wording of how the voucher should be,
8 and gave it to her.

9 Q Who is the proper person?

10 A Her name at the time was Jessie Newlove. She
11 has since married and her name now is Jessie Rahuba.

12 Q What did you tell Mrs. Rahuba?

13 A I told Mrs. Rahuba that I wanted to get this check
14 and I would okay the voucher, that she should prepare the
15 voucher for it, and I would then give her the bill at a
16 later date to go with that voucher, since it was not the
17 normal procedure.

18 Q What was the normal procedure?

19 A The normal procedure was one wherein the invoice
20 would first come to our office, then a voucher would be
21 prepared.

22 Q What happened after you gave these instructions
23 to Mrs. Rahuba?

24 A She drew up a voucher which I then okayed.
25 She processed it and got a check and then gave the

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J. Zander-direct

2 check and the duplicate of that voucher, not the original
3 but the duplicate of that voucher is attached to the check.
4 She gave me both of those. I then had my secretary
5 draw up an envelope for Mr. Goldman because she had his
6 address. She drew up an envelope, gave it to me, and
7 then I put the voucher and the check in the envelope
8 and put it in the folder, I call them.

9 Q And what was the routine practice of Sportservice
10 in connection with outgoing mail from an office such as
11 yours?

12 A Well, we had a basket on our desk for outgoing
13 mail, and as long as mail was put in before 3:00 o'clock,
14 someone from the mail room would go around, pick it up
15 and then put it in the mail desk, put on the postage,
16 and final mailing.

17 If it was after 3:00 o'clock, and I wanted to be
18 sure it went out, then I would walk to the mail desk and
19 put that in myself into the outgoing mail.

20 Q On this occasion how did you do it?

21 A I don't recall exactly how I did it on that
22 occasion.

23 Q Depending on the time of the day, but as you are
24 describing it, you did it either one way or the other?

25 A Yes, either one way or the other.

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2 Q Mr. Zander, showing you what has been marked as
3 Government's Exhibit 2, 2-A and 2-B for identification,
4 can you identify each of those exhibits referring to the
5 exhibit tag number?

6 A Yes.

7 Q Would you do that, please?

8 A Exhibit 2 is the check for \$7500 that
9 I have just reviewed and described. Exhibit 2-A is the
10 original remittance statement for that amount, which I
11 have described. And Exhibit 2-B is the duplicate copy
12 of that remittance statement which would normally go with
13 the invoice -- sorry, with the check and mailed to the
14 supplier or in this case to the Jola Candy Company.

15 Q Is that what you did with the duplicate remittance
16 statement on this occasion?

17 A Yes.

18 MS. STRAUSS: The government offers 2, 2-A, and
19 2-B.

20 MR. FRIEDMAN: No objection.

21 THE COURT: All right. Mark them in evidence.
22 At this point, ladies and gentlemen, it is time for our
23 afternoon break.

24 (Government's Exhibits 2, 2-A and 2-B received
25 into evidence.)

(Recess.)

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2 (In open court, jury present.)

3 MS. STRAUSS: May I read and display to the jury
4 Government's Exhibit 2-A which has just been received
5 in evidence?

6 THE COURT: Yes.

7 (Government's Exhibit 2-A received in
8 evidence.)

9 Q Mr. Zander, did the Jola Candy Company ever
10 render services in the design and display of candy
11 machines at all subway outlets?

12 A No.

13 Q Mr. Zander, showing you Government's Exhibit 3
14 for identification, can you identify that document?

15 A Yes.

16 Q What do you identify it to be?

17 A It is a copy of an invoice from Jola Candy
18 to Sportservice Corporation.

19 Q How do you identify it? How do you know that
20 document?

21 A This is the document that I had requested
22 Mr. Goldman to send me after he received my check --
23 my voucher, remittance statement and check.

24 Q Did you receive that document?

25 A Yes.

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2 Q How do you know that?

3 A I note my -- in my handwriting a notation that it
4 was paid and the date that I received it being December
5 23, 1970.

6 Q How did you receive that invoice, Mr. Zander?

7 A In the mail.

8 Q How do you know that?

9 A It is the normal course of business. My
10 secretary delivers the mail to me on my desk and this was
11 among mail delivered at that time.

12 MS. STRAUSS: The government offers Government's
13 Exhibit 3.

14 THE COURT: Any objection?

15 MR. FRIEDMAN: No objection.

16 THE COURT: Okay, marked in evidence.

17 (Government's Exhibit 3 received in
18 evidence.)

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19 MS. STRAUSS: Your Honor, may I read and display
20 this document to the jury?

21 THE COURT: Sure.

22 (Government's Exhibit 3 received in
23 evidence read to the jury.)

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24 Q Mr. Zander, directing your attention to December
25 1971, did you receive a telephone call from Mr. Goldman

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2 at that time?

3 A Yes.

4 Q Where were you?

5 A In Buffalo. In my office.

6 Q What did Mr. Goldman say to you on that
7 occasion and what did you say to him?

8 A Mr. Goldman told me that it was Christmastime
9 and it was time that we do something for our friend
10 in the way of a Christmas present.

11 Q Do you recall whether his wording was "our
12 friend"?

13 A Not specifically because he sometimes referred --
14 he referred to him as our friend or Sy, but I can't be
15 certain of it.

16 Q What did Mr. Goldman say at that time? What
17 else did he say?

18 A That's all he said. Then I said, "Well, okay,
19 what do you think it should be?"

20 He said, "I think \$500 is okay, so let's handle
21 it the same way as we did before. Jola will bill
22 Sportservice for \$750."

23 I can't recall for certain whether I -- whether
24 he suggested the word promotion, because that was a
25 common phrase, or I suggested the wording for the voucher

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J. Zander-direct

2 to be promotion. In this particular case, the normal
3 procedure was followed in that the invoice was mailed
4 first to my attention.

5 Q Showing you Government's Exhibit 4 for
6 identification, can you identify that document, Mr. Zander?

7 A Yes.

8 Q What do you identify it to be?

9 A This is the document that was sent to me as
10 a result of our phone conversation that I have just related.

11 Q Is it the Jola Candy invoice?

12 A It is a Jola Candy invoice to New York Sportservice
13 in the amount of \$750.

14 Q How did you receive that?

15 A I received that in the mail.

16 MS. STRAUSS: The government offers Government's
17 Exhibit 4 at this time.

18 MR. FRIEDMAN: No objection, Judge.

19 THE COURT: Okay, marked in evidence.

20 (Government's Exhibit 4 received in
21 evidence.)

22 MS. STRAUSS: Your Honor, may I show this to the
23 jury?

24 THE COURT: Sure, go ahead.

25 (Government's Exhibit 4 in evidence read to the
jury.)

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2 Q Mr. Zander, after you received that invoice
3 what did you do?

4 A I took it to the person in charge of the --
5 regular voucher department, a Mrs. Kallett, and told
6 her to prepare a check and a remittance statement. The
7 first thing she does is prepare the remittance statement,
8 which I then okay, and then it gets processed. The
9 instruction I gave her, whenever we want an invoice within
10 a day or two, it is called a walk, otherwise it would take
11 two weeks. That is the normal process. So I told her
12 to walk it and return it to me and then the following day --
13 I am not sure if it was the following day or the day after,
14 she gave me the check to go with the duplicate copy of
15 the remittance statement.

16 Q And what did you do with the check and the duplicate
17 copy of the remittance statement?

18 A I had my secretary type up an envelope addressed
19 to Mr. Goldman at Washington Street and give it to me.
20 I then took the remittance statement and the check in
21 the envelope and put it either in my outgoing mail or
22 delivered it to the mail desk, depending upon the time
23 of day.

24 Q Showing you Government's Exhibits 5, 5-A and 5-B,
25 can you identify each of those documents, referring to

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2 them each by exhibit tag number?

3 A Yes.

4 Q What are they, sir?

5 A Government's Exhibit 5 is the check for \$750 from
6 Sportservice to Jola Candy Company.

7 Q That you just referred to in your testimony?
8 Exhibit 5-A is the duplicate copy of the remittance
9 statement which accompanied the check, which I just reviewed
10 in testimony. Exhibit 5-B is the original remittance
11 statement concerning the transaction which I have
12 reviewed -- just reviewed in testimony.

13 MS. STRAUSS: The government offers 5, 5-A and
14 5-B.

15 MR. FRIEDMAN: No objection, Judge.

16 THE COURT: Marked in evidence.

17 (Government's Exhibit 5, 5-A and 5-B received
18 in evidence.)

19 Q Mr. Zander, directing your attention to January
20 1973, did you receive a telephone call from Mr. Goldman
21 at that time?

22 A Yes.

23 Q And what did he say to you on that occasion?

24 A Mr. Goldman told me that we hadn't taken care
25 of our friend for this past year and he has continued to be

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J. Zander-direct

2 cooperative. I said, "I agree." Mr. Goldman said, "Let's
3 do the same thing for him that we did the first time --
4 the last time, which was \$500, making a check out for \$750
5 to cover the taxes."

6 Q What then happened?

7 A I then told him to follow the same procedure
8 as he did previously in that he should make up an
9 invoice and send it to me and then I would get it processed
10 and get a check back to him.

11 Q I show you Government's Exhibit 6 for
12 identification. Can you identify that document, Mr. Zander?

13 A This Exhibit 6 is the invoice to which I
14 have just reviewed -- that I made to Mr. Goldman, the
15 requested invoice I told him to send me.

16 Q It is an invoice from the Jola Candy Company?

17 A It is an invoice from the Jola Candy Company to
18 New York Sportservice.

19 Q How did you receive that, Mr. Zander?

20 A I received that in the mail.

21 MS. STRAUSS: The government offers Exhibit 6.

22 MR. FRIEDMAN: No objection.

23 THE COURT: All right, it is received.

24 (Government's Exhibit 6 received in
25 evidence.)

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2 Q What did you do after you received that invoice,
3 Mr. Zander?

4 A I followed the procedure of going to the person
5 in the voucher department, Miss Kallett. I told her to
6 make up a remittance statement based on this invoice
7 and when she had -- after she made the remittance
8 statement up I had to okay it. She then took it and
9 had it processed for drawing off a check, which I told
10 her to return to me and I told her to follow the same
11 procedure of what we call a walk, meaning to be done
12 within 24 to 48 hours.

13 (Continued on the next page.)

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2 Q What happened next?

3 A The duplicate copy of the remittance state-
4 ment and the check was delivered to me.

5 I had my secretary type up an envelope
6 addressed to Mr. Goldman and she then gave me back the
7 envelope. I put the check and the remittance statement into
8 the envelope and mailed it out either by putting it in my
9 outgoing mail or by delivering it to the mail desk myself.

10 Q Mr. Zander, showing you Government's Exhibit
11 7, 7-A and 7-B, can you identify each of those documents?

12 A Yes.

13 Q What do you identify them to be?

14 A Exhibit 7 is the check from Sportservice
15 Corporation to Jola Candy Company for \$750 representing
16 the transaction I have just described.

17 Q 7-A?

18 A 7-A is the duplicate copy of the voucher that
19 accompanied that check made out -- from Sportservice
20 Corporation to Jola Candy Company.

21 Q And 7-B, sir?

22 A 7-B is the original copy of the remittance
23 statement from Sportservice Corporation to Jola Candy
24 Company in the transaction I have just discussed.

25 MR. STRAUSS: The government offers Exhibits 7,

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2 7-A and 7-B.

3 MR. FRIEDMAN: No objection.

4 THE COURT: Mark them in evidence.

5 (Government's Exhibits 7, 7-A and 7-B
6 were received in evidence.)

7 MR. STRAUSS: Your Honor, may we circulate
8 all these documents to the jury at this time?

9 THE COURT: Sure, go ahead.

10 (Pause.)

11 (Government's Exhibits 5, 5-A, 5-B, 6, 7,
12 7-A and 7-B handed to the jury.)

13 (In the robing room.)

14 THE COURT: I am still trying to get 619,
15 which is a courtroom.

16 Two, somebody from the press has requested
17 the clerk to produce the names and addresses of the
18 jurors. I ordered the clerk not to do it.

19 The only other people who have the names and
20 addresses, and possibly not even the addresses, are you
21 two folks. Don't do it.

22 MR. STRAUSS: I certainly will not.

23 MR. FRIEDMAN: I would never dream to do it
24 and I don't have their addresses, except to the extent that
25 you indicated their addresses, but I took nothing off the

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2 cards, I can assure you, and if I did I wouldn't do it.

3 THE COURT: What chutzpa.

4 That would cause some mischief if some
5 reporter starts going around visiting the jurors.

6 MR. FRIEDMAN: I suppose he must have had
7 his inspiration from the act -- what was it, in the Post,
8 about the business of something going to see a juror in
9 a case that had been tried how many years before and getting
10 that juror's transaction to what transpired. It's
11 unbelievable that these things happen.

12 THE COURT: It hit me while the jury was look-
13 ing at the papers and I figured I would take this up with
14 you.

15 MR. FRIEDMAN: While we are here, because I
16 take it we are going to end in a few minutes, can I raise
17 one thing I would have raised once your Honor excused the
18 jury in the court?

19 THE COURT: Yes.

20 MR. FRIEDMAN: I want to ask Miss Strauss
21 whether there is anything more by way of 3500 material
22 associated with this man? He hasn't literally finished
23 testifying, so you can really say when he finishes
24 testifying you can do this or that, but I think your
25 Honor has today gotten the 3500 material that was

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2 turned over previously, there is such a divergence, there
3 is such a lack of relationship between what has hereto-
4 fore been handed to us and the testimony of this witness
5 today that I find it unbelievable that this man has not
6 been interrogated and interviewed and notes made of his
7 statements that would in some way refer or relate to
8 the matters we are hearing today for the first time.
9 That's my view, my belief, but I am just making my request
10 and it is on the record.

11 MS. STRAUSS: I represent we have turned
12 over all the 3500 material. The only caveat to that
13 is I mentioned to Mr. Friedman and his associates the
14 other day that we have voluminous materials from the
15 correspondence files of the Transit Authority and on one
16 occasion Mr. Zander had occasion to write letters to the
17 Transit Authority about matters unrelated to this case,
18 when they wanted to move a soda machine.

19 MR. FRIEDMAN: Soda machine or photo machine --

20 THE COURT: You are talking about the testimony
21 he has given today.

22 MR. FRIEDMAN: Exactly, Judge, and anybody who
23 talked to him and made any kind of notation or note of
24 all or any part of substance. There are things being
25 said today for the first time that have no antecedent

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2 whatever in the 3500 material. I am saying it strikes me
3 as very strange. You have Mr. Lynch this morning saying
4 he had six visits with the friends and I don't know how
5 many visits Mr. Zander had, but it strikes me strange.
6 I want that clearly on the record because if it turns
7 out differently there is a consequence.

8 THE COURT: Sure, but hopefully it is not
9 going to turn out differently. Check and make sure.

10 MR. STRAUSS: I am confident there isn't.

11 THE COURT: Check.

12 MR. FRIEDMAN: This ventilates my mind --
13 I may be wrong, but I think, for example, that if somebody
14 sat with this man yesterday, just as an example, and
15 said now I want to review with you your testimony and made
16 notes of what questions and answers were that he was
17 going to give, I believe that's producible.

18 THE COURT: You are not talking about the
19 U.S. Attorneys' work product, are you?

20 MR. FRIEDMAN: I am talking about the that's with-
21 in 3500 that represents the substance or the summation of
22 what the man says.

23 MS. STRAUSS: So there is no mystery about it
24 I will tell Mr. Friedman on the record that I make a point
25 of not taking down a witness' statement. That's my

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2 practice. So I don't generate 3500 material.

3 THE COURT: I am not even sure that it is
4 3500 material.

5 MS. STRAUSS: I would argue that it is not.

6 THE COURT: All right, 619 is all clear and
7 we go there on Monday morning.

8 MS. STRAUSS: I wanted to bring to your Honor's
9 attention that Mr. Zander comes from Buffalo. He is
10 hoping to catch a plane.

11 THE COURT: We are going to break right
12 now.

13 MS. STRAUSS: I assume, your Honor will
14 admonish the jury about publicity?

15 THE COURT: Sure.

16 (In open court.)

17 THE COURT: Garv, would you pick up those
18 exhibits.

19 MR. LIPPE: I have them here.

20 THE COURT: Ladies and gentlemen, on Monday
21 morning we begin at 10 o'clock in courtroom 619, which is
22 a courtroom where we will all be comfortable. No longer
23 is it required that you bring a sweater. I assure you
24 it will be comfortable.

25 Please, once again, let me remind you, don't read

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2 any newspaper accounts or listen to anything on the media
3 concerning this case.

4 Rather than have any difficulty in where
5 courtroom 619 is, the clerk is going to take you right now
6 up there and show you where it is.

7 Would you do so?

8 THE CLERK: Yes, sir.

9 THE COURT: Everybody else remain in the
10 courtroom.

11 (Jury excused.)

12 (At the side bar.)

13 THE COURT: This woman, who is the last
14 alternate, just tells me that she made arrangements
15 to go with a church to Canada and will not be back until
16 Monday afternoon.

17 I took the position she was due back here
18 at 10 o'clock on Monday. What position do you people take
19 on it?

20 MR. STRAUSS: Did she then acquiesce?

21 THE COURT: No. That's why she was on her
22 knees.

23 MR. FRIEDMAN: I don't have any position at all.
24 She has to be here when the Court says she has to be here.

25 THE COURT: I don't have a choice either.

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2 MR. FRIEDMAN: So therewe are.
3 We are all in teh same boat.

4 The only alternative is to put the case
5 over until the afternoon, but I don't know why the
6 Court would inconvenience even for one person. It's not
7 right at all.

8 MS. STRAUSS: We would only suggest that we
9 caution her very strongly so we don't lose her because at
10 this point we need all five.

11 THE COURT: All right. I just wanted to tell
12 you what was going on.

13 MR. FRIEDMAN: You don't have any thought?

14 THE COURT: I don't have any different thought
15 at all, I just wanted to let you know what was going on
16 and I don't have I think a choice either, but to tell her
17 to be here Monday at 10 o'clock.

18 (In opene ourt.)

19 THE COURT: Miss Simon, I am sorry, but Monday
20 at 10 o'clock be back at 619.

21 Gary, would you show her where the jurv room
22 is.

23 (Adjourned to Monday, August 29, 1977, at
24 10 o'clock a.m.)
25

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2 United States of America

3 vs

75 Cr. 337

4 Irving Goldman

6 New York, N.Y.

7 August 29, 1977 10:00 a.m.

8 (Trial resumed.)

9 (In open court, jury not present.)

10 MS. STRAUSS: May we have a robing room
11 conference before we begin?

12 THE COURT: You want to do it inside?

13 MS. STRAUSS: I would prefer it.

14 THE COURT: Sure.

15 (Robing room conference.)

16 MS. STRAUSS: I expect that we would be
17 finishing up the direct examination of Jack Zander
18 this morning. Before the cross examination of Mr. Zander
19 begins I would ask that your Honor preclude defense
20 counsel from going into this conviction of Emprise Corpora-
21 tion which he mentioned in his opening statement. Mr.
22 Friedman informs me that he would try to elicit from Mr.
23 Zander the fact of that conviction.

24 First of all Mr. Zander has absolutely no personal
25 knowledge of that trial or that conviction. The only

1 jqrf 161

2 thing he knows about it is what he read in the newspapers
3 or heard from other people second or third-hand around
4 the company. Apart from his lack of personal knowledge
5 we would suggest that that conviction is absolutely
6 irrelevant to the issues in this case and that an attempt
7 to try the Emprise Corporation is simply inappropriate
8 here.

9 The scheme to defraud is not any less of a scheme
10 to defraud if it was visited upon a corporation that at
11 some point in time had a legal problem of another nature.
12 I don't see it as a defense and I think that it could
13 readily become a point of great prejudice, confusion
14 and could easily become a trial within a trial if
15 we were to attempt to show precisely all the facts and
16 defense counsel were to try to get into the same situation
17 of proving what that trial was all about out in California
18 or Nevada, I think it was. We have some material. We
19 have a copy of the Ninth Circuit opinion which describes
20 that case and I think your Honor would be able to see
21 from the opinion that events there are events that took
22 place with Emprise Corporation back in 1966 when it
23 got involved in buying a hotel in Las Vegas with someone
24 who was later accused of being connected with the Mafia.
25 And the fact of the ownership of certain persons in that

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2 hotel was not disclosed to Nevada authorities which would
3 constitute a misdemeanor under Nevada law.

4 That got converted into a Travel Act federal
5 indictment with the individuals whose interests were
6 not disclosed being tried and Emprise Corporation being
7 named initially in the indictment that was dismissed
8 against Emprise and later named in an information and
9 it was tried together.

10 People from Emprise, namely Max Jacobs, testified
11 for the government in that case. He was not personally
12 responsible for whatever acts Emprise undertook at that
13 time. Rather, whatever had happened had been as a result
14 of business dealings that had gone on with his father
15 who is now dead and could not testify as to what he
16 knew or did not know at that point in time.

17 Max Jacobs was not running Sportservice. He
18 has not really run the company from the time his father
19 died. Jerry Jacobs has and there has been no suggestion
20 that Jerry Jacobs was involved in the underlying facts
21 that ultimately resulted in that conviction.

22 THE COURT: Can we have a copy of that opinion?

23 MS. STRAUSS: This is it.

24 MR. FRIEDMAN: Shall I defer until your Honor
25 has looked at this?

1 jqrf 163

2 THE COURT: Let me look at this thing first.

3 (In open court, jury present.)

4 J A C K Z A N D E R, resumed the stand,
5 having been previously duly sworn, and testified
6 further as follows:

7 THE COURT: All right, Ms. Strauss.

8 DIRECT EXAMINATION CONTINUED

9 BY MS. STRAUSS:

10 Q Mr. Zander, with respect to Government's Exhibits
11 4 and 6, the Jola Candy invoices that were received in
12 evidence late Friday, what special services as listed
13 on those invoices were rendered by the Jola Candy
14 Company to Interborough News?

15 A None.

16 Q What special services were rendered by the Jola
17 Candy Company to Sportservice?

18 A None.

19 Q On Friday you testified in response to the
20 following question as follows:

21 "Q What official titles did you have with Interborough
22 News?

23 "A Initially I didn't have any official title.
24 At a later point in time I became vice-president."

25 Can you amplify on that answer, sir? Did you

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2 have any other official title at Interborough News at any
3 time?

4 A Yes.

5 Q What was that, sir?

6 A I became president.

7 Q When did you become president?

8 A In 1967.

9 Q How long did you have that position?

10 A Until approximately April 1975.

11 Q Also at page 113 of the transcript -- I'm sorry,
12 123, in response to this question you gave the following
13 answer:

14 "Q Mr. Zander, directing your attention to the fall
15 of 1968 what if any further discussion did you have with
16 Mr. Goldman about Interborough News at that time?

17 "A Mr. Goldman was wanting to further -- still
18 continue to increase business and get more accounts.
19 I told him that I didn't feel we could increase it to any
20 great degree without arousing some possible deduction on
21 the part of Sportservice that there might be something not
22 quite right."

23 And the answer goes a little beyond that.

24 When did that discussion take place?

25 A That discussion actually took place very late

1 jqrfr 165 J. Zander-direct
2 in 1969.

3 Q From 1967 until 1974 what was the general nature
4 of Jola Candy Company's business with Interborough News
5 Company?

6 A Interborough News Company would place orders
7 with certain candy manufacturers or jobbers with
8 instructions for that respective candy jobber or
9 manufacturer to bill that merchandise to Jola Candy
10 Company but to deliver it to the Interborough Shipping
11 Department.

12 The Jola Candy Company would then in turn bill
13 Interborough News for that identical merchandise at
14 inflated prices.

15 Q Mr. Zander, what repeated conversations did you
16 have with Irving Goldman over this time period about the
17 business dealings that you just described?

18 MR. FRIEDMAN: If your Honor please, I object.

19 THE COURT: I will permit it.

20 Q What repeated conversations you had with Irving
21 Goldman during this same time period that you just
22 described?

23 THE COURT: Just tell us the conversations and
24 then we will go into how many times you had it if you
25 had it.

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2 A On a number of occasions I had conversations
3 with Mr. Goldman where he told me he wanted to increase
4 the business of Jola Candy Company and I did go along
5 and increase that business from time to time.

6 Q When did these conversations take place?

7 MR. FRIEDMAN: If your Honor please, may I approach
8 the bench?

9 THE COURT: Sure.

10 (At the side bar.)

11 MR. FRIEDMAN: I am getting a sense of deja vu.
12 I have read the transcript and everything done this
13 morning is either by way of clarification or an explanation
14 of something he testified to before or a repetition of
15 it. This is not proper and I object. How many times
16 is the government going to take this thing through?
17 He has given dates for this and he is asking to correct
18 if he said '68 please say it is '69 and how many
19 repeated conversations did you have.

20 This is terribly prejudicial and it keeps
21 coming on and on and it is repetitive and there is no
22 purpose for it.

23 MS. STRAUSS: I read the transcript and we
24 did not go into it. It is an important item of evidence
25 to show how it came to be over a period of time, when

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2 they increased and at what time they tapered off and
3 why.

4 MR. FRIEDMAN: There is a sequence in the
5 record of requests as the witness testified to.

6 THE COURT: I have not read anything about
7 tapering off.

8 MS. STRAUSS: That is what he is going to explain.
9 What period he agreed in and when it stopped.

10 MR. FRIEDMAN: Tapering off I haven't heard
11 before. Let's make no mistake about that. He hasn't
12 been asked about tapering off. All he is being asked for
13 is going through requests made allegedly to increase.
14 Your Honor recalls without my having to say it that this
15 has been gone through on Friday and it is now being gone
16 through again.

17 THE COURT: We are getting into the tapering off
18 so let's get into it.

19 MR. FRIEDMAN: But don't preface it by a repetition.
20 It is part and parcel of reading a question to the witness
21 and reading part of the answer. I don't want to have to
22 object to these improper forms of the question and the
23 repetition. But they ought to stop.

24 THE COURT: Let's get into the tapering off.

25 (In open court.)

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2 Q Over what period of time did these conversations
3 that you just described take place?

4 A They took place from 1967 until towards the
5 end of 1969 primarily.

6 Q Why did they stop at that time, Mr. Zander?

7 A It was at that time that I told Mr. Goldman
8 that I didn't think it would be a good idea to increase
9 the business any further without possibly or there
10 being a possibility of arousing some question in our
11 home office.

12 Q Can you describe to the jury generally what
13 were the levels of the increases of the business of Jola
14 over the period from 1967 to 1974?

15 MR. FRIEDMAN: If your Honor please, I object.

16 THE COURT: I will permit it. Go ahead.

17 A The levels of increases, Mr. Goldman had told
18 me that he wanted to inflate the original cost price of
19 the candy item in certain instances and I told him that
20 I didn't think it was a good idea because in a particular
21 instance he wanted to increase a candy item that he was
22 billing Jola -- Jola Candy was billing to Interborough
23 News for 4-3/4 cents and he wanted to increase it to 5
24 or 5-1/4 cents and I told him that would be unwise
25 because any candy or any item of merchandise that was

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2 normally purchased where the merchandise cost, which means
3 versus the selling price, was in excess of 50 percent
4 generally could possibly alert our office as to why we
5 would be paying such a high price for that item versus
6 its selling price.

7 Q Between 1967 --

8 THE COURT: Hold it a second. One, where did
9 the conversation take place?

10 THE WITNESS: I believe that was a discussion
11 that took place in New York City, in Manhattan in his
12 offices.

13 THE COURT: Do you know what time or when
14 approximately this took place?

15 THE WITNESS: I would say it took place in the
16 latter part of 1969.

17 (Question read.)

18 THE COURT: Did you hear the question?

19 THE WITNESS: Yes.

20 THE COURT: Tell us what the answer to that
21 question is.

22 THE WITNESS: The levels of increase varied
23 depending upon the type of candy. For example, if it
24 were a popular candy such as a Clarke Bar the level of
25 increase was much less than if it were an off brand.

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2 For example, if I may --

3 THE COURT: Let's go back to the question that
4 was asked. The question is an overall question.

5 THE WITNESS: The level of increase varied
6 depending upon the particular product.

7 MS. STRAUSS: Perhaps I can put the question
8 more clearly.

9 THE COURT: Go ahead.

10 Q Between 1967 to 1968 what was the increase
11 in the percentage of business that Jola Candy Company
12 obtained from Interborough News?

13 A It increased substantially, possibly anywhere
14 from 50 to 100 percent.

15 Q How about as between '68 and '69?

16 A It again increased substantially.

17 THE COURT: What do you mean substantially?

18 THE WITNESS: Possibly an additional 50 or
19 60 percent.

20 Q And between '69 and '70?

21 A It did not increase in 1970 over '69, to my
22 recollection.

23 Q And from there to the end of the period of time
24 that you were receiving these checks, '69 through '74
25 what was the level of increase over that period?

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2 MR. FRIEDMAN: I object to the form of the
3 question.

4 THE COURT: Sustained.

5 Q What was the percentage increase in business that
6 Jola obtained from Interborough from about 1969 to 1974?

7 A The percentage of increase?

8 Q Did it increase or not?

9 A The volume did not increase, it decrease!

10 Q About when did it decrease, do you know that?

11 A It started decreasing in 1970. And it decreased
12 modestly for the balance of the years.

13 Q From 1967 to 1974 what monies did Sportservice,
14 Interborough News or the Jacobs family owe to Irving
15 Goldman?

16 MR. FRIEDMAN: I object to that question.

17 THE COURT: Yes, break it up.

18 Q You previously testified, Mr. Zander, about the
19 dealings between Sportservice and Irving Goldman at the
20 New York Worlds Fair. At the end of those dealings
21 what if any monies were left owing to Irving Goldman?

22 A To my knowledge, none.

23 Q Did there come a time when Interborough News
24 had a business relationship with a company called
25 Photo Identification?

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2 A Yes.

3 Q When was that, Mr. Zander?

4 A I am not sure. It was approximately 1970.

5 Q How did those dealings begin?

6 A Mr. Goldman told me that he had made arrangements
7 with a photo company where they would furnish photo machines
8 for the subway and there would be a percentage from those
9 receipts that would be divided between Jola Candy Company,
10 Interborough News and the Transit Authority.

11 Q What were those percentages?

12 A To my best recollection, at that time the
13 percentage was 30 percent, 20 percent going to the
14 Transit Authority and I believe 6 percent going to Jola
15 Candy Company -- I am not sure if it was 6 or 7 percent
16 and the balance, 3, 4 percent going to Interborough
17 News.

18 Q Mr. Zander, what role if any did Max Jacobs
19 have in running the Interborough News Company?

20 A Max Jacobs got involved in Interborough News
21 Company when the -- during the first years of operation,
22 primarily 1964 and 1965.

23 Q What did he do at that time?

24 A He did mostly observations, had numbers of
25 discussions with Mr. Lynch, viewed the vending machines,

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2 made recommendations as to how the operation might operate
3 better economically.

4 Q Directing your attention to September 1973
5 what if anything happened at that time in connection with
6 Mr. Goldman's position as an officer of Interborough News?

7 A At that time Mr. Goldman resigned as an officer
8 of Interborough News.

9 (Continued on the next page.)

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2 Q How did that come about, Mr. Zander?

3 A Mr. Goldman telephoned me and as a result of
4 that discussion requested that I make the necessary
5 arrangements to effect his resignation.

6 Q What did you then do?

7 A I relayed that information to our legal
8 department.

9 Q Specifically to whom?

10 A Mr. Mr. Kraus.

11 Q When did the Interborough News Company
12 stop doing business with the Jola Candy Company?

13 A I believe it was in the spring of 1974.

14 Q What if any conversation did you have with
15 Mr. Goldman about that?

16 A I told Mr. Goldman that under the current
17 circumstances it would not be prudent to continue doing
18 business with Jola Candy Company, to which he ultimately
19 agreed.

20 Q Directing your attention to April --

21 THE COURT: Wait a second. Where did this
22 conversation take place?

23 THE WITNESS: It was a telephone call.

24 THE COURT: Do you recall when?

25 THE WITNESS: It could have been the spring of

1 2 jqr 175

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2 '74 or later. I can't recall, your Honor.

3 THE COURT: Okay.

4 Q Directing your attention to April 1974 did
5 you receive a telephone call from Mr. Goldman at that
6 time?

7 A Repeat the question.

8 Q Directing your attention to April '74, did you
9 receive a telephone call from Mr. Goldman at that time?

10 A Yes.

11 Q Where were you at that time?

12 A I was in my home office in Buffalo.

13 Q What did he say to you on that occasion
14 and what did you say to him?

15 MR. FRIEDMAN: If your Honor please,
16 I object. May I approach the bench?

17 THE COURT: Yes, sure.

18 (At the side bar.)

19 MR. FRIEDMAN: I believe this is a prelude
20 to an answer which says that he and Goldman had a talk
21 and Goldman asked him to say that he either was not
22 or never had been an officer of Interborough. If I am
23 correct about that I think that is a totally improper
24 question. It is put in for prejudice. The testimony
25 is apparently that he resigned in 1973. So as of 1974

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2 if that testimony is to be believed he was no longer
3 an officer. In any event, they are not charging him here
4 with asking people to say that he was or was not an
5 officer. This may possibly be germane to
6 rebuttal. It is not, I submit to your Honor, proper
7 for direct examination. It is just another piece of
8 what the government is assiduously trying to do here,
9 that is ask witnesses questions which are supposed to
10 elicit the fact that Goldman asked someone not to
11 tell the truth or that Goldman himself did not tell the
12 truth. But that is not what this case is about, if your
13 Honor please, and I object. If I am wrong about what
14 I assume Miss Strauss is going to put in then I have
15 misapprehended but I don't think I have.

16 MS. STRAUD: We offer it as evidence of
17 consciousness of guilt. Mr. Goldman was trying to
18 cover up the fact he had been an officer of the company
19 and it is a very significant act for him to have committed
20 in light of the fact that he is now going to claim there
21 was simply no fraud.

22 MR. FRIEDMAN: Cover up the fact that he
23 was an officer in the face that they have introduced into
24 evidence contracts that were signed by the public
25 institution, the Transit Authority of the City of New York,

1 4 jqbr 177 J. Zander-direct

2 in which he puts his name as an officer.

3 THE COURT: Would someone do me a favor
4 and clue me in as to one who is going to ask him and
5 two, why?

6 MS.STRAUSS: The press was inquiring because
7 there was publicity in the newspapers where Mr. Goldman
8 was de. ing he was an officer of Interborough to the
9 newspapers and Mr. Zander ultimately went on the record
10 and told newspaper reporters what the facts were and the
11 records reflected that Mr. Goldman had been an officer
12 of Interborough News.

13 It was a point in time when Jola and the
14 nature of its operations were revealed in the press.
15 But I have instructed the witness not to go into the fact
16 that it was prejudicial for the city or anything of that
17 sort. Simply we wanted to bring out the acts of the
18 defendant, evidence we will be offering later, that
19 Mr. Goldman denied under oath before the Department of
20 Investigation that he had ever been an officer of
21 Interborough News. After he had this conversation
22 with Mr. Zander when Mr. Zander informed him of the
23 precise dates of his officership so there is a pattern
24 here of trying to cover up the fact that he was willing
25 to go to the point of lying under oath and we submit it is

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2 excellent evidence of consciousness of guilt.

3 MR. FRIEDMAN: It becomes quite clear what we
4 are supposed to start trying here is a case having to do
5 with newspaper accounts and at somebody's response
6 and that is going to be added to by an allegation that
7 he didn't answer truthfully before the Department of
8 Investigation of the City of New York and as I recall, I
9 may be wrong about this, he was once charged with perjury
10 counts in the state.

11 There was testimony with respect to that and
12 that was dismissed.

13 MS. STRAUSS: Because of jurisdiction.

14 MR. FRIEDMAN: Dismissed in any event.
15 I don't know how many cases we are going to be trying here
16 at one time. Also to tell me the witness has
17 been carefully coached or prepared to tell a narrow thing
18 and not get into the circumstances under which it came
19 out I say this is not a case in which the defendant is
20 charged with perjury. It is not a case in which he is
21 being charged with lying. These are all post-operative
22 events as far as anybody can see. We are talking
23 about things that happened after the conspiracy was formed
24 long after any agreement is supposed to be a part of the
25 conspiracy. I object to it. It is clearly as far as

1 6 jqr 179

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2 I can see prejudicial and meant to be prejudicial to the
3 defendant.

4 THE COURT: Most things that are probative
5 are prejudicial. All right. It is coming in.

6 (In open court.)

7 Q We were asking about a conversation in
8 April 1974 when Mr. Goldman telephoned you at your office
9 in Buffalo. What did he say to you on that occasion and
10 what did you say to him?

11 A Mr. Goldman told me that I should anticipate
12 a call from the news media.

13 THE COURT: Okay. You should anticipate a
14 call.

15 Go a head.

16 THE WITNESS: I should anticipate a call where
17 I would be asked if Mr. Goldman was currently an officer
18 or was ever an officer of any of the corporations of
19 Sportservice or its subsidiaries and Mr. Goldman told me
20 that if such inquiry was made to me I should tell them
21 that he was not.

22 I told Mr. Goldman that I couldn't do that
23 because the record would speak for itself. The record
24 was in our legal department files and that there was no way
25 that I could specifically advise anyone of something that was

1 7 jqr 180

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2 contrary to the actual records in our office. Mr. Goldman
3 responded that he could see my point and it was okay.

4 Q What did you then do as a result of that
5 conversation?

6 A I proceeded to have checked the official
7 positions that I thought that Mr. Goldman could possibly
8 be part of and I got that information and relayed that
9 information to Mr. Goldman.

10 Q What was that information that you ascertained
11 and related to Mr. Goldman?

12 A I told Mr. Goldman that he was -- that the
13 only thing he was ever an officer of was Interborough
14 News Company, and I told him he was an officer from
15 approximately the fall of 1967 to the fall of 1973.

16 Q Mr. Zander, from 1969 through 1974 when your
17 children were receiving checks from Jola how much money
18 in total did they receive?

19 A The gross total?

20 Q Yes.

21 A Approximately \$100,000.

22 Q During that same period to whom were you
23 reporting at Sportservice? Who was the person in charge
24 at Sportservice?

25 A Mr. Jerry Jacobs.

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2 Q What was his title at that time?

3 A He was president of Sportservice until 1973.

4 At that time there was another parent corporation formed
5 that was over Sportservice and he became president of that
6 but no longer president of Sportservice Corporation.

7 Q Mr. Zander, what, if anything, did you tell
8 Mr. Jacobs about the Jola Candy Company? That is during
9 this entire time period.

10 MR. FRIEDMAN: May we know which Mr. Jacobs
11 we are referring to?

12 THE COURT: Yes.

13 MS. STRAUSS: Mr. Jerry Jacobs to whom Mr. Zander
14 was just referring.

15 A I told Mr. Jerry Jacobs that Jola Candy
16 Company was a supplier and Mr. Goldman was running it.

17 Q A supplier of what?

18 A A supplier of candy and also -- just the supplier
19 of candy.

20 Q Was that true what you told Mr. Jacobs,
21 that Jola was a supplier of candy?

22 A No.

23 Q Who at the Sportservice handled the payment of
24 invoices for the Jola Candy Candy?

25 A The voucher department.

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2 Q How were the invoices processed?

3 A The invoices would come in from Jola Candy
4 Company to Interborough News Company into the Buffalo office.
5 The Buffalo office would prepare remittance statements
6 and it would then be processed for checks to be drawn
7 and run through our tabulating department and then the
8 remittance statements together with the checks would
9 funnel through to the mail desk for mailing to the Jola
10 Candy Company.

11 Q Mr. Zander, from the face of the Jola invoices
12 that came in what could the employees who participated in
13 this process you just described determine about the Jola
14 Candy Company?

15 MR. FRIEDMAN: Objection, if your Honor
16 please.

17 THE COURT: Sustained.

18 Q Until mid 1974 who, if anyone, at the
19 Sportservice Corporation knew that the Jola Candy
20 Company was not a candy supplier?

21 MR. FRIEDMAN: If your Honor please,
22 I object to that.

23 THE COURT: I will permit it.

24 A Would you repeat the question.

25 (Question read.)

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2 A No one. That is other than myself.

3 Q And until mid 1974 who, if anyone, at
4 Sportservice knew that your children had a financial
5 interest in the Jola Candy Company?

6 A No one.

7 Q Did there come a time when you had a conver-
8 sation with Mr. Jerry Jacobs about your dealings with the
9 Jola Candy Company?

10 A Yes.

11 Q When was that, Mr. Zander?

12 A That was approximately the fall of 1974.

13 Q Where did that conversation take place?

14 A In Mr. Jacobs' office.

15 Q Who else was present?

16 A No one else was present.

17 Q Without telling us what Mr. Jacobs said to you
18 can you tell the jury what you said to him on that oc-
19 casion?

20 A As a result of what Mr. Jacobs told me
21 I told Mr. Jacobs of my participation in the Jola Candy
22 Company through the benefits of my children.

23 Q As a result of that discussion with Mr. Jacobs
24 what next happened?

25 A I was called by Mr. Berg, who is attorney

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for Mr. Jacobs and Sportservice, and asked to come into his office.

Q How long after your conversation with Mr. Jacobs did that occur?

A Possibly a few weeks.

Q Who else was present at that time?

A Mr. Hollman, who also was an attorney.

Q Again, without telling us what the attorney said to you who did you tell them on that occasion?

MR. FRIEDMAN: If your Honor please, I object.

THE COURT: I will sustain the objection.

Q Mr. Zander, as a result of the revelations that you made to Mr. Jacobs what happened to your position at Sportservice?

MR. FRIEDMAN: If your Honor please, I object to the form of the question.

THE COURT: We will let it go. See if you can answer that.

A The first step is I was requested to resign from all my official positions, all my officer positions in April 1975.

Q What did you do in response to that request?

A I resigned from all those positions.

Q What happened thereafter?

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2 A Then over the next six months I was told to
3 turn over gradually my responsibilities to other personnel
4 in the office.

5 Q And after that, Mr. Zander?

6 A After that I was requested to resign from
7 the organization.

8 (Continued on next page.)
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2 Q When did that take place?

3 A In November 1975.

4 Q What if any agreement did you enter into with
5 Sportservice upon your resignation?

6 A I entered into a non-competitive agreement
7 whereby I could not, during the term of that agreement,
8 I could not work for any other organization of similar nature.
9 I could not go into business, that similar type business
10 for myself, with the possible exception that if I made a
11 request for a single operation, a single franchise
12 restaurant or whatever, that they would consider it and
13 would not withhold it unreasonably.

14 Q What, if anything, did you receive in return
15 for entering into that agreement?

16 A I received an agreement for compensation for
17 \$3,000 per month.

18 Q What, if any, agreement did you reach with
19 Sportservice about the money that your children had
20 obtained through the Jola Candy Company?

21 A I signed a note in the amount of \$95,000, some
22 type of note.

23 Q Did there come a time when you met with
24 federal prosecutors about this case?

25 A Yes.

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2 Q When was that?

3 A February 1, 1975.

4 Q What agreement did you reach with the federal
5 government about your statements and testimony in this
6 case?

7 A I was given use immunity which meant that any
8 testimony that I have submitted or given could not be
9 used against me with the exception, of course, of perjury.

10 Q Is it also your understanding, Mr. Zander,
11 that any statements that you make outside of court
12 cannot be used against you in connection with this matter?
13 Any statements to federal prosecutors outside of court.

14 A Yes

15 Q And that evidence that we obtain directly as
16 a result of your statements and testimony also could
17 not be used against you, is that part of the agreement?

18 A Yes.

19 Q Mr. Zander, after your first meeting with
20 federal prosecutors, you testified that was in February
21 1975, what, if anything, did you receive in the mail?

22 A I received a newspaper clipping and memorandum.

23 MR.FRIEDMAN: If your Honor please, may I approach
24 the bar?

25 THE COURT: Sure.

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(At the side bar.)

MR. FRIEDMAN: We are coming up now on another piece of material about which I have spoken to Miss Strauss before because it was raised in connection with the opening and at that time she said she wasn't going to refer to it in the opening and, therefore, we did not have to bring it to your Honor's attention at that time. What I understand is involved here is this witness will probably say that he received a newspaper clipping or part of a newspaper clipping to which there was attached or with which there was accompanied to it a handwritten note --

MS. STRAUSS: Perhaps it would be easier if I got it and the Judge could see it and you don't have to describe it.

MR. FRIEDMAN: By all means.

THE COURT: Who put this in?

MS. STRAUSS: I have no idea.

MR. FRIEDMAN: I have no idea.

The government has heretofore gotten handwriting exemplars from Goldman and as I understand what the government says, the government is satisfied that that is not Goldman's handwriting.

MS. STRAUSS: Yes, your Honor.

MR. FRIEDMAN: The government has called

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2 in a woman who is Goldman's secretary or was Goldman's
3 secretary and they have gotten handwriting exemplars
4 from her and the government has submitted those to a
5 handwriting expert and the expert if called would testify
6 that this writing was that woman's writing. That is
7 where it stands at this moment. It is on the printed
8 paper, if you will, of the defendant but it is not his
9 handwriting. I believe there is not going to be any evi-
10 dence at this time by the government to show that Goldman
11 authorized or directed that that piece of paper in the
12 handwriting be written.

13 In other words, in the face of the fact that
14 they concede it is not his handwriting they simply
15 want it to come in because it is on his letterhead and
16 somebody else has written his name onto it as a signatory.
17 I think, if your Honor please, that is absolutely improper
18 as a matter of law. If you are going to offer something
19 against the defendant you must -- and say something that
20 comes out of his mouth, in substance, you must prove --

21 THE COURT: Wait a second. You are just
22 objecting to it. You don't have to explain it.

23 Sustained.

24 MS. STRAUSS: We weren't going to offer it.
25 We are going to lay a foundation as we proceed and offer

1 jqbr 190 J.Zander-direct

2 it at the point where we think we have the circumstantial
3 evidence to support its admission.

4 THE COURT: You are going to have to go pretty
5 far to come up with circumstantial evidence to support
6 this.

7 MS. STRAUSS: The same secretary has
8 signed similar notes, specifically Irving and it was also
9 by the content of it directed by the defendant. We would
10 say with respect to this in terms of circumstantial
11 evidence I would not have made this argument now because
12 we weren't going to offer it now but we point out to your
13 Honor that the probability that she took it upon herself
14 to write this is nullified by the fact that at the end the
15 note indicates "Please write" which would have been a re-
16 sponse directed to the defendant Irving because on the
17 face Mr. Zander would have no way of knowing who and
18 someone would not take it upon herself to do it on her
19 own and have the response go directly to Mr. Goldman.
20 In addition to that, to assume that Sally Shulman did this
21 on her own or at the request of someone else you would
22 have to assume that either she or someone else was in
23 a position to know that Irving Goldman had entered into
24 a conspiracy with Jack Zander or that Jack Zander was in
25 a position to be with the authorities which is what the

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2 newspaper article says, that someone came from Buffalso sing-
3 ing to the authorities. I think the content of the note
4 plus the fact that on one other occasion which we will
5 show Sally Shulman signed Irving in a note she obviously
6 would not have taken upon herself, a business note of
7 Sportservice, she obviously would not take it upon her-
8 self to do it on her own and it is sufficient evidence to
9 come before the jury and of course with counsel for
10 each side being able to argue the inferences that he
11 either directed or did not direct from the various
12 circumstances surrounding it.

13 (In open court.)

14 THE COURT: Ladies and gentlemen, we will take
15 our morning break now.

16 (The jury left the courtroom.)

17 MS. STRAUSS: This is the note that we
18 would also offer as circumstantial evidence and we have
19 stipulated between the defense and the government that
20 that is also Sally Shulman's writing, as circumstantial
21 evidence that Sally Shulman would sign his name on note-
22 paper like this in notes up to Jack Zander as to messages
23 that she would have no reason to do on her own. This
24 is the response given to Mr. Goldman as a result
25 of that note.

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I think we have from this evidence that Mr. Goldman did do business this way. Of course, as to the article we would not offer the whole article but a redacted version. We took out the prejudicial material in the first line. I assume your Honor --

MR. FRIEDMAN: This is beyond admissibility.

MS. STRAUSS: We wouldn't consider putting anything in beyond what you need to make sense of the note. The whole of the article is absolutely irrelevant and in part prejudicial.

MR. FRIEDMAN: This is a question of preliminary showing necessary in order to admit a paper. I submit to your Honor you can't have a piece of paper come in which needs a foundation on the ground that the people can speculate about what might or might not have been a proponent of any piece of paper has to show that it is authorized to come into evidence and what is required here for that is that this piece of paper be shown to have been done under direction of the defendant or approved by him thereafter and from what Miss Strauss says it is perfectly clear she is not prepared to make that representation. What she wants to do is let people argue whether or not it was. That is not enough to come into evidence.

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2 THE COURT: I agree with you. It doesn't make
3 it.

4 (Robing room conference.)

5 MS. STRAUSS: We both reviewed the transcript
6 of Friday's proceeding and there was an answer Mr. Zander
7 gave at Page 113 of the transcript where he said "I told
8 him that I certainly had no objection making extra money
9 but I was concerned with hazards of being found out and
10 it would be something that I would not want to think about"
11 and then he goes on a bit more. Mr. Friedman and I both
12 agree that the witness said I would want to think about
13 it and it should read without the word "not" in there.
14 We stipulate that that is the way it should read.

15 I just wanted to ask the witness without saying
16 what the content of the exhibit is if that is the item
17 he received in the mail for the purpose of laying a
18 foundation in case we can develop sufficient evidence later
19 of getting it in so there wouldn't be a problem of
20 recalling him.

21 THE COURT: All right, but you have a long way
22 to go before you get that into evidence.

23 (In open court; jury present.)

24 O Mr. Zander, showing you Government Exhibit 1
25 for identification, is that the item or items that you

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2 received in the mail in February 1975 that you mentioned
3 in your earlier testimony?

4 A Yes.

5 MS. STRAUSS: I have no further questions.

6 (At the side bar.)

7 MR. FRIEDMAN: I already touched on this on
8 Friday and that is the request for 3500 material but now
9 that Ms. Strauss says she is specifically finished with
10 the direct I want to renew the question.

11 THE COURT: All right.

12 MS. STRAUSS: I went through the file folder
13 of notes that Mr. Schwartz made in connection with
14 this case and I am familiar with my own notes and there is
15 no material of that nature that I have not already turned
16 over. I again say for example the Transit Authority
17 and Interborough correspondence files have letters
18 from Mr. Zander and these have been available to the
19 defense for two years.

20 THE COURT: All right.

21 MR. FRIEDMAN: Notes made by anybody connected
22 with the prosecution which the prosecution has from
23 anybody else reflecting statements or summaries of state-
24 ments made by this man. I am not going to be the one
25 to teach you what 3500 means. I want it absolutely clear

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now --

THE COURT: She said it.

Don't go into this until I finish it and by this I mean the opinion of the Ninth Circuit. So far the only nice thing about it is that there is an apology for the length of the opinion.

MR. FRIEDMAN: I want to hand to you now, Miss Strauss, copies of papers that we will be using, it is my intention to use in the course of the cross of this witness. Many of them are papers that you have copies of because they came from the files.

(In open court.)

CROSS EXAMINATION

BY MR. FRIEDMAN:

Q Mr. Zander, after court recessed on Friday where did you go?

A I went to the airport bus depot and from there I went to the airport and from there I went home.

Q Did you stay in Buffalo over the weekend until you returned here?

A I returned here on Sunday.

Q About what time?

A I got to Newark Airport about 4 o'clock.

Q Let's just confine ourselves for the moment

1 jqbr 196 J.Zander-cross
2 to the time between the time that you left here on Friday
3 until the time that you got back here on Sunday at 4 o'clock.
4 Did you talk to anybody about this case in that interval
5 in any manner, shape or form?

6 A Yes.

7 Q Did you talk to one or more than one person?

8 A One.

9 Q Face-to-face or by some other method of
10 communication?

11 A Face-to-face.

12 Q Where was this person to whom you spoke about
13 this case?

14 A In my home.

15 Q To whom did you speak?

16 A My wife.

17 Q Did you make any telephone calls to talk to
18 anybody about this case over the weekend?

19 A No.

20 Q When was the last time that you talked to
21 Jerry Jacobs?

22 A I would say a couple of weeks ago.

23 Q Was that face-to-face?

24 A Yes.

25 Q Where?

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J.Zander-cross

2 A In his office.

3 Q Did he invite you there?

4 A Yes.

5 Q Was anybody else present?

6 A No.

7 Q Did the discussion on that day between your-
8 self and Jerry Jacobs touch in any way, shape or form
9 upon anything having to do with this lawsuit or this
10 prosecution?

11 A Yes.

12 Q Did you discuss with Mr. Jacobs aspects of
13 this case at any length at all, short, long or indiffer-
14 ent?

15 A I don't know whether -- may I make a state-
16 ment? I don't know whether the answer is yes or no.
17 If I can explain -- I don't know.

18 Q I will come back to that. Let me withdraw
19 that question for a moment.

20 When last before that time, approximately two
21 weeks ago, did you talk to Jerry Jacobs?

22 A I believe about five or six weeks ago.

23 Q Where did this meeting take place if it was
24 face-to-face?

25 A There was a grand opening of the new offices

1 jqr 198 J.Zander-cross
2 of Sportservice and there was a big party and I bumped
3 into him at that party.

4 Q At what place was this grand opening held?

5 A In the back of their new offices. They had
6 a banquet dinner, a formal opening.

7 Q This is the new offices of Emprise, Sportservice,
8 New York Sportservice, the whole family of companies, is
9 that it?

10 A Yes.

11 Q Some place in Buffalo?

12 A Yes.

13 Q They moved from one location to another?

14 A Yes.

15 Q What is the new location? Do you remember
16 the name? That is the address.

17 A 700 Delaware Avenue.

18 Q What was the old address?

19 A 703 Main Street.

20 Q This party, this banquet, how did you come
21 to be there?

22 A I was given a formal invitation.

23 Q By whom?

24 A By the president of the corporation.

25 Q And the president is?

1 jqbr 199

J.Zander-cross

2 A Mr. Donald Carmichael.

3 Q He is president of what corporation?

4 A Sportservice Corporation.

5 Q How long has he been president?

6 A Since approximately June 1975.

7 Q Is it fair to say then that in a general sort
8 of way he succeeded you as president of Sportservice?

9 A Yes.

10 Q Do you understand that Mr. Carmichael had some
11 knowledge or acquaintance with the facts that led to your
12 ultimate departure in November 1975 from Sportservice's
13 employ?

14 A Yes.

15 Q Did you ever talk to Mr. Carmichael about
16 the crimes against federal statute that you proclaim
17 that you have committed?

18 A No.

19 Q At this banquet you talked to Jerry Jacobs
20 and you talked to Max Jacobs?

21 A Yes.

22 Q Did you come with your family or any repre-
23 sentatives of your family?

24 A My wife. She was there.

25 Q How many people approximately were at this

1 jqbr 200 J.Zander-cross

2 banquet?

3 A A few hundred.

4 Q And it was held at the location of the new
5 office, is that right?

6 A Yes, the people were invited to inspect the
7 new offices and then come to the back of the building where
8 they had a tent set up with food and drinks.

9 Q Prior to the banquet for the grand opening
10 when did you last talk to Jerry Jacobs?

11 A Possibly, 7, 8, 10 months ago.

12 Q Where did that conversation take place?

13 A In the offices of Mr. Carmichael.

14 Q Do you happen to recall whether you were
15 invited to be at those offices?

16 A Yes.

17 Q Who invited you?

18 A I believe it was Mr. Carmichael.

19 Q And in the course of your being at the
20 office of Mr. Carmichael, among other things that happened,
21 you met and had a conversation with Mr. Jerry Jacobs,
22 do I have that right?

23 A Not alone.

24 Q Perhaps with Mr. Carmichael, perhaps as well with
25 others?

1 jqbr 201 J.Zander-cross

2 A Yes. I don't specifically recall -- it was a
3 general discussion with a group. I don't specifically
4 remember whether I actually talked directly to Mr. Jacobs
5 about anything of the results of that meeting or the
6 contents of that meeting.

7 Q From what you have said, Mr. Zander, apart from
8 Mr. Carmichael and Mr. Jerry Jacobs and yourself there
9 were other people present, is that correct?

10 A Yes.

11 Q And these were officers or employees of Emprise
12 or Sportservice, is that right?

13 Q Yes.

14 Q And you were participating in a meeting having
15 to do with some kind of business discussion pertaining
16 to those changes, is that right?

17 A Yes.

18 Q And this is eight to ten months ago roughly
19 today and since that day is near the end of August it is
20 something that happened either at the beginning of this year,
21 1977, or within two months of the end of last year 1976,
22 roughly, right?

23 A Yes.

24 Q Let us, if you will, concentrate for a moment
25 upon Max Jacobs.

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2 When for the last time did you talk to Max
3 Jacobs?

4 A I believe the last time I spoke to Max Jacobs
5 was at that particular party to which I referred.

6 Q And prior to that time when did you next last
7 speak to Max Jacobs or have any communication or conversa-
8 tion with him?

9 A I bumped into Max Jacobs and his wife at a restaur-
10 ant. It was during the blizzard. It must have been in
11 January 1977.

12 Q Apart from that incident do you remember
13 any other conversations you have had with Max Jacobs
14 let's say in the last two years?

15 A There was a political cocktail party to which
16 I was invited I am trying to remember -- I know I
17 remember one -- I remember Larry Jacobs being there and
18 Jerry Jacobs being there. I am not sure if Max Jacobs
19 was there. If he was there I would have spoken to him
20 but I don't recall.

21 Q In any event, whatever Jacobs were there and
22 you are sure of two of them you spoke to them in the course
23 of attending that cocktail party?

24 A Yes.

25 Q Is it fair to say generally speaking that

1 jqbr 203

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2 between let's say November 1975 which is when you say
3 you left the employ of the family of companies and this
4 date, today, that you have on a variety of occasions
5 spoken either to Max or Jerry or Larry Jacobs?

6 A Yes.

7 Q And those meetings or those incidents or those
8 events were events which at least in some part, in some
9 number, took place at the office, the old office of the
10 company, is that right?

11 A Yes.

12 Q Let me ask you about a man named Hollman.
13 I think you mentioned him in the course of your direct testi-
14 money, Daniel Hollman. Do you know him?

15 A Yes.

16 Q When did you first meet Mr. Hollman?

17 A I would say about three, four years ago.

18 Q That places it something in the area of
19 1973 to 1974, is that your recollection?

20 A Yes.

21 Q Before your pattern, your history of criminality
22 was communicated by you to the Jacobs family, right?

23 A Yes.

24 Q Did you meet Mr. Hollman in connection with
25 something having to do with Emprise or Sportservice?

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2 MR. STRAUSS: Objection.

3 THE COURT: If he knows.

4 A No.

5 Q Where did you meet him?

6 A I met him as an introduction only. If I
7 recall he was in Mr. Jacobs' office. I went to his office
8 to make an appointment to indicate that I wanted to see him
9 and in the course of it Mr. Jacobs introduced me to him.
10 That was the extent of my knowing him.

11 Q This is Jerry Jacobs' office?

12 A Yes.

13 Q And Mr. Hollman was in there when you came
14 in one time?

15 A Yes.

16 Q How did Mr. Jacobs, Jerry Jacobs, introduce
17 Mr. Hollman?

18 A This is Mr. Hollman, Mr. Zander.

19 Q Did he tell you what Mr. Hollman did or was
20 doing in his office?

21 MS. STRAUSS: Objection.

22 THE COURT: No. I will allow it.

23 A No.

24 Q Did he say what kind of business Mr. Hollman
25 was in?

1 jqbr 205 J.Zander-cross

2 A Not at that time.

3 Q Did there come a time when you found out
4 what profession or occupation Mr. Hollman was engaged in?

5 A Yes.

6 Q When?

7 A Some time later. I don't remember just when.

8 Q In any event, before you made your confession
9 of criminality?

10 A Yes.

11 Q So some time you found out that he was what?

12 A He was a lawyer. I found out he was a lawyer.

13 He had formerly worked in Washington and that he was
14 engaged in some Emprise matters.

15 Q He was engaged on some Emprise matters?

16 A Yes.

17 Q That he was representing Emprise in some matters,
18 is that correct?

19 A Yes.

20 Q As a lawyer?

21 A Yes.

22 Q Who told you that? Do you remember?

23 A I believe Mr. Jerry Jacobs told me that.

24

25

1 1 jgrf take 2b-206 J. Zander-cross

2 Q Did Mr. Jacobs tell you the nature of the matters
3 to which this retention pertained? All I want from you
4 now is a yes or no.

5 MS. STRAUSS: I object and ask to approach the
6 bench.

7 THE COURT: No, he can answer yes or no.

8 A No.

9 Q Did you later find out the nature of the matters
10 to which the representation pertained, yes or no?

11 A Yes.

12 Q And did that piece of knowledge or information
13 come to your attention before you made your confession
14 of criminality?

15 A Yes.

16 Q When did you last have any communication with
17 Mr. Hollman?

18 A Friday, last Friday.

19 Q The last day we were in court here?

20 A Yes.

21 Q Was that face-to-face?

22 A He saw me face-to-face, yes.

23 Q Where?

24 A In the office of Ms. Strauss.

25 Q At what time of day?

1 2 jqrfr 207

J. Zander-cross

2 A During the lunch hour.

3 Q And you had a meeting at that time in which Mr.
4 Hollman and yourself met with Ms. Strauss and others
5 perhaps?

6 A No.

7 Q Was he present in the office?

8 A Pardon?

9 Q Was he present in Ms. Strauss' office together
10 with you?

11 A Yes.

12 Q For how long, approximately?

13 A Just a couple of minutes.

14 Q And then did you and he have any occasion to be
15 by yourselves together?

16 A No.

17 Q Where did you meet him?

18 A I was in Ms. Strauss' office and he came in to
19 Ms. Strauss' office to see Ms. Strauss. In the course
20 of it he gave me some reimbursement forms for my travel
21 that he had and gave them to me so that I could cash them
22 in.

23 Q Did you know Mr. Hollman was going to be at
24 Ms. Straus' office?

25 A No.

1 3 jgrf 208

J. Zander-cross

2 Q Is Mr. Hollman your lawyer?

3 A Yes.

4 Q For how long has Mr. Hollman been your lawyer?

5 A Since the time I first went to the United States
6 Attorney's Office, just prior to February 1975.

7 Q February 1975 was a date that you associate with
8 the first visit to the United States Attorney's Office,
9 is that right?

10 A Yes.

11 Q And your testimony now is that sometime before
12 that you met Mr. Hollman or came to Mr. Hollman so he could
13 be your lawyer?

14 A He came to me.

15 Q He came to you?

16 A He was in the office. We neither came to each
17 other. It was in the offices of Sportservice.

18 Q Can you give me an approximate month of the year
19 on which Mr. Hollman came to you at Sportservice?

20 A It could have been possibly in December 1974
21 or January 1975.

22 Q I just want to have the time sequence correct,
23 Mr. Zander. By December 1974 or January 1975 your testi-
24 mony is that you told Jerry Jacobs about the theft,
25 as you say it, of \$100,000 from his company, right?

1 4 jgrf 209 J. Zander-cross

2 A Yes.

3 Q Notwithstanding you are still on the premises
4 as president of Sportservice in December '74 or January
5 '75, right?

6 A Yes.

7 Q Notwithstanding which you are still on the
8 premises as a director of Sportservice and Interborough,
9 right?

10 A Yes.

11 Q And notwithstanding which you are still drawing
12 your regular salary, right?

13 A Yes.

14 Q Notwithstanding which you have not paid back
15 at that time a single penny of the \$100,000 that you
16 say you stole from them, right?

17 A That is correct.

18 Q And while you are sitting there going about your
19 every day business as if nothing in the world had happened
20 in ~~W~~alks Mr. Hollman, a lawyer whom you know to be or
21 have been told represents your defrauded employer, right?

22 MS. STRAUSS: Objection.

23 THE COURT: I will permit it.

24 Q Is that correct?

25 A May I correct one thing?

1 5 jgrf 210

J. Zander-cross

2 Q I wish you would answer my question first and
3 then you can correct what you want.

4 A I said yes to something that was not totally
5 correct.

6 Q All right.

7 A You asked if I had engaged Hollman prior to
8 my signing the note, that I signed the note later.

9 Q I think you misstate my question. I did not ask
10 such a question and I will understand that if you have some
11 point about that that you reserve it.

12 I want to come back to the question and that
13 is at the time of the things that I have mentioned to
14 you and at a time when you knew or had been told that
15 this Mr. Hollman was a lawyer who was retained by the
16 companies you had defrauded in came Mr. Hollman to see
17 you about this matter, right?

18 A Yes.

19 Q Did you ask him what fairy had lifted him and
20 brought him to your door when you were in such dire circum-
21 stances?

22 MS. STRAUSS: Objection.

23 THE COURT: Yes. Change the question around.

24 Q In came Mr. Hollman and you had a conversation
25 with him, right?

1 6 jqrfr 211

J. Zander-cross

2 A Yes.

3 Q Let's just see if we can't get to the end of
4 the conversation or at least one level of it. By the
5 time that conversation was finished had you retained a
6 lawyer?

7 A Yes.

8 Q And the lawyer was Mr. Hollman?

9 A Yes.

10 Q He had been sent to represent you, right?

11 A He represented --

12 Q He had been sent to represent you, right?

13 A I don't know if he was directed by anyone.

14 I would not know if he was directed by anyone.

15 Q When he walked in the office did he explain how
16 it was he was coming to see you to talk about the matters
17 that you talked about?

18 A Yes.

19 Q What did he say had caused him to appear there?

20 MS. STRAUSS: Objection.

21 THE COURT: I will permit it. Go ahead.

22 A I don't know -- I am not sure if I am answering
23 the question correctly but Mr. Hollman told me that based
24 upon the fact that I was granted immunity he did not
25 see any conflict of interest representing Sportservice

1 7 jqrfr 212

J. Zander-cross

2 as well as myself and that if I were in agreement that he
3 would represent me that he would be glad to.

4 Q Let's see if we can't get this timeframe right.
5 You said to me that your first appearance before a
6 federal grand jury was in February 1975. We are now talking
7 about something which according to your testimony took
8 place in December 1974 or January 1975 and which was the
9 first time, according to you, that you had met Mr. Hollman
10 in relation perhaps to your need for personal legal
11 representation. I put the question to you again.

12 Did Mr. Hollman tell you what it was or who it
13 was who had suggested that he come to see you to talk
14 about taking on your representation with respect to the
15 matters about which you had confessed?

16 A He did not tell me it was suggested.

17 Q Did you inquire at any time?

18 A No.

19 Q You never asked Jerry Jacobs whether he
20 had sent Mr. Hollman to see you?

21 A No.

22 Q You never asked Max?

23 A No.

24 Q You just accepted the tender, the offer of his
25 services, is that right?

1 8 jgrf 213

J. Zander-cross

2 A Yes.

3 Q And he offered his services to you?

4 A Yes.

5 Q He said he would assist you, right?

6 A Yes.

7 Q He said he would try and he believed he would be
8 successful in working out something where for these crimes,
9 these several crimes in which you allegedly were involved,
10 that you would get an immunity, a forgiveness, right?

11 A He has made the offer of representing me after
12 he was assured by the United States Attorney's Office that
13 I would be given immunity.

14 Q You mean he had been to the United States
15 Attorney's Office on your behalf before you had retained
16 him?

17 A Yes.

18 Q Is that what he said to you, that he had gone
19 to the United States Attorney before even talking to you
20 about your representation and had already worked out an
21 immunity for you?

22 A He advised me that he had worked out an
23 immunity for me.

24 Q And that was before you stuck your nose into
25 the United States Attorney's Office?

9 jqrfr 214

J. Zander-cross

A Yes.

Q And you had not talked to Mr. Hollman to indicate what it would be that you might say as a matter that would be of interest to the government in return for a promise of immunity?

A Oh, yes.

Q Oh, you had?

A Yes.

Q I want to know when you talked to Mr. Hollman before he went to the United States Attorney's Office.

A That was when I was in Mr. Berg's office with Mr. Hollman.

Q Mr. Berg?

A Yes, Mr. Berg had called me into his office as a result of discussions that Mr. Jacobs had with him.

Q Let us back up some more now.

If I remember what you said, you said that sometime in the fall of 1974 you had a conversation with Jacobs, the substance of which was that you laid out to him if he didn't already know the extent of your criminality, right?

A Yes.

Q How long after that were you summoned to see Mr. Berg?

1 10jqrf 215

J. Zander-cross

2 A I believe it was a few weeks, two, three, four
3 weeks. I don't recall. It was two or three weeks.

4 Q Let me understand something: You told Mr. Jacobs
5 every detail that you could remember about your wrongdoing,
6 didn't you, in this confession session?

7 A I didn't give him any details. It was a brief
8 discussion. I only told him that I was involved with the
9 Jola Candy Company through my two children being stock-
10 holders. I didn't tell him any more than that.

11 Q You didn't tell him you stole \$100,000?

12 A No.

13 Q You didn't tell him that you had conspired to
14 defraud the federal government in respect of the
15 Internal Revenue Service laws?

16 A No.

17 Q You didn't tell him you conspired to defraud the
18 Transit Authority of the unbiased performance of services
19 by its employees?

20 A No.

21 Q Did you tell him you had a hand in filing false
22 and fraudulent tax returns for Sportservice?

23 A No.

24 Q Did there come a time when you made those
25 elements of confession to Mr. Jacobs?

1 11 jqrfr 216

J. Zander-cross

2 A No.

3 Q You never have confessed those to him?

4 A No.

5 Q But you told him something about Jola and the
6 fact that your children had a piece of Jola, is that the
7 substance of it?

8 A Yes.

9 Q And when you told him that you tell him now
10 what did he say to you as close as you can in terms
11 of words?

12 MS. STRAUSS: Objection, your Honor.

13 THE COURT: I will permit it. Go ahead.

14 A He didn't say anything. He dismissed me from
15 his office.

16 Q Did he say, Jack, Mr. Zander, you are a
17 lifelong employee, an intimate of my dead father, one
18 of the highest ranking executives of this company, and
19 you are telling me you have done such a terrible thing,
20 get out, is that the substance of it?

21 A All he said was okay, that is all Jack, go back
22 to your office.

23 Q He didn't want to know how much money?

24 A No, sir.

25 Q He didn't want to know why or wherefore you had

1 12 jgrf 217

J. Zander-cross

2 done it?

3 A No.

4 Q He didn't want to talk about getting back the
5 \$100,000 or any part of it?

6 A He did not say anything like that.

7 Q And he didn't talk to you about whether since
8 you already were a confessed criminal you should be allowed
9 any further to remain on the premises of the company,
10 did he?

11 A No.

12 Q He just said that is all? And it took then some
13 three, four weeks before anything further was heard in
14 the halls of Emprise about your confession, is that right?

15 A Yes.

16 Q For three, four weeks you sat there, you
17 confessed you had been, as you say, a criminal, you
18 confessed it to the highest officer of the company and
19 nothing was said for three, four weeks, is that it?

20 A That's right.

21 Q Okay, one day you were summoned to Mr. Berg.
22 Tell me who Mr. Berg is.

23 A Mr. Berg is an attorney for Sportservice.

24 Q What is his first name?

25 A Steve.

1 13 jqrfr 218

J. Zander-cross

2 Q Steve Berg. Is he somebody who works in-house
3 or is he an independent lawyer for Sportservice?

4 A He is an independent lawyer.

5 Q He is part of a law firm in Buffalo, right?

6 A Yes.

7 Q And that law firm and Mr. Berg among others
8 has represented Sportservice and Emprise and a variety
9 of the subsidiaries in many matters, isn't that right?

10 A Yes.

11 Q He called you together to his office outside of
12 the company, right?

13 A Yes.

14 Q And you went there?

15 A Yes.

16 Q How did this appointment get to be made?

17 A By telephone.

18 Q What did he say to you in substance?

19 A On the telephone?

20 Q Yes, sir.

21 A He called me and told me he wanted to see me at
22 a certain time in his office. That is all he told me.

23 Q Did you ask him whether you should bring a lawyer
24 along?

25 A No.

1 14 jgrf 219

J. Zander-cross

2 Q Was it the same day that you saw him?

3 A No, I don't believe it was the same day. It may
4 have been a day or two later.

5 Q How long did your visit with Mr. Berg last?

6 A It might have been an hour or two.

7 Q Who, if anyone, beside Mr. Berg attended all or
8 any part of that meeting?

9 A I believe that first meeting was just with
10 Mr. Berg.

11 Q Just you and Mr. Berg. Tell me how he started
12 out the conversation.

13 A He asked me to relate to him the details of
14 my dealings as it pertained to the Jola Candy Company.

15 Q Did he first say something to the effect,
16 look here Jack -- does he call you Jack?

17 A I believe he does, yes.

18 Q Look here, Jack, Jerry has told me about what
19 you said to him some three or four weeks ago and I am
20 here to follow it up, is that the substance of it?

21 A Yes.

22 Q And then he asked you to tell him what it was
23 all about, right?

24 A Yes.

25 Q Did you then make a good, full confession?

1 15 jgrf 220 J. Zander-cross

2 A Not completely. I told him --

3 Q You answered my question. "Not completely" is
4 the answer.

5 THE COURT: Is that a question?

6 MR. FRIEDMAN: I want to know if that is
7 the answer to the question that I asked.

8 THE COURT: Yes.

9 A I didn't cover completely as I have covered in
10 this testimony.

11 Q Your description to him which was closer in
12 time to the events wasn't as fullsome as it has been here
13 on Friday and today, is that right?

14 A That is correct.

15 Q Did Mr. Berg, before he went into this recital
16 of your crimes, did he tell you what you should be
17 thinking about, did he say, look you can tell me this
18 and you don't have to worry about it, or you can tell
19 me this, we are going to take care of it? Did he say
20 anything to you about your situation before he asked
21 you to embark on this description of the crimes?

22 A I don't remember if he did or didn't. I don't
23 remember his preamble of it.

24 Q Did he say, Jack, look, we don't want to hurt you?

25 A No, he didn't say that.

1 16 jgrf 221

J. Zander-cross

2 Q Jack, we want to give you all the help we can,
3 Jack, maybe not in those exact words, but in substance?

4 A Not at that time.

5 Q Not at that time, but at some time?

6 A At some time in substance.

7 Q Sometime a little later Mr. Berg said to you,
8 "We want to give you all the help we can," right?

9 A That happened in the later meeting when Mr.
10 Hollman also was present.

11 Q In any event, it happened within a matter of
12 how long from this meeting that you had with Mr. Berg
13 alone?

14 A Possibly a few weeks.

15 Q While you were talking to Mr. Berg was he making
16 any notes?

17 A I don't remember.

18 Q Did he ask you to deliver to him any materials?

19 A I don't remember any specific material that he
20 asked me to deliver.

21 Q Incidentally, is Mr. Berg, would you agree with
22 me, one of the leading if not leading outside counsel
23 for the Emprise-Sportservice group of companies?

24 A Their leading ones changed from time to time.
25 He was one of the leading ones, I guess.

1 17jqrf 222

J. Zander-cross

2 Q And he had been counseling with the late Mr.
3 Jacobs for years, hadn't he?

4 A No.

5 Q How long has he been active in respect of the
6 affairs of Emprise and Sportservice and related companies?

7 A I don't know. I didn't really -- I met Mr. Berg
8 more recently a few years ago and I don't know whether he
9 ever represented the late Mr. Jacobs.

10 Q But he represented, you knew, the companies?

11 A After Mr. Jacobs, yes.

12 Q In the course of this conversation with Mr.
13 Berg did you tell him what you had done with the stolen
14 money?

15 A Yes.

16 Q What did you tell him?

17 A I told him the procedures I had followed.
18 He wanted to know just what procedures I followed. I
19 told him that as checks were received for each of the
20 children respectively I put them in the bank in each
21 one of their respective bank accounts. I told him that
22 I filed separate tax returns for each one of the
23 children.

24 Q Did he ask you to please bring him copies or
25 the passbooks for these bank accounts?

1 18 jgrf 223

J. Zander-cross

2 A No.

3 Q Did you tell him where the bank accounts were?

4 A No, I don't believe he asked.

5 Q Did he ask you whether you still had the
6 money left?

7 A I don't recall him asking the question.

8 Q How old are your children now?

9 A Now they just turned 23 and 21.

10 Q When the question came up, as I think you testified
11 that it did, that you should sign a note for I think you
12 said \$95,000 --

13 A Yes.

14 Q Did any of your children sign that note?

15 A No.

16 Q Do you live in a house?

17 A Yes.

18 Q Do you own a house?

19 A Yes.

20 Q In whose name is the house?

21 A Mine.

22 Q Yours alone?

23 A Yes.

24 Q Did you give any security interest in the house
25 to back up your note for \$95,000?

1 19 jqrf 224

J. Zander-cross

2 A No.

3 Q Do you have a copy of the note?

4 A Not here. I have it.

5 Q In Buffalo?

6 A Yes.

7 Q Did somebody represent you with respect to the
8 execution of that \$95,000 note?

9 A No.

10 Q You just were given a note and they said, please
11 sign this, and you signed?

12 A Yes.

13 Q Didn't you ask Mr. Hollman whether you should
14 sign?

15 A I read the note and I understood it. It was not
16 difficult to understand what it said.

17 Q Tell me a little what it said in terms of the
18 obligation that it put upon you, Mr. Zander, for \$95,000.

19 A It acknowledged that I misappropriated funds.
20 I am not sure of the language, I don't remember.

21 Q Whatever the language was, though, between you
22 and me as far as you are concerned the word stole would
23 be a good word, right?

24 A If that is what -- if that is the correct
25 interpretation.

1 20jqrf 225

J. Zander-cross

2 Q Not my interpretation. I can't have interpretations
3 Do you say that you stole the money?

4 A Yes.

5 Q All right, it is your interpretation, right?

6 A Yes.

7 Q All right. So it acknowledged that you in
8 substance stole \$95,000?

9 A Yes.

10 Q Not \$100,000?

11 A I signed a note for \$95,000. I thought that was
12 the approximate amount. I believe I since learned it
13 was 97 or 98. We used the figure 95.

14 Q Nobody took the trouble in all of that time
15 to sit down and to try to figure out precisely how much
16 you had stolen?

17 A Mr. Berg said, "Should we make it \$100,000?"
18 And I said, "It's closer to 95, I think we should make
19 it 95."

20 Q And Mr. Berg, ever agreeable, said, "If you say
21 95, Jack, that is agreeable to me?"

22 A Yes.

23 Q And so it was a \$95,000 note.

24 Tell me how the note provided that you were
25 going to meet its obligation?

1 21 jqrfr 226

J. Zander-cross

2 A It was a note bearing 6 percent interest.
3 It did not have a due date on it. It did not provide
4 how I was going to pay it.

5 Q No due date?

6 A I believe it may have been a demand type note.

7 Q You mean this note in substance said that any
8 time -- to whom was the note? What company or what payee
9 was the note made out to?

10 A I believe Sportservice.

11 Q \$95,000, 6 percent interest and you believe it
12 was a demand note?

13 A I believe so. I know it didn't have any due
14 date or any payments schedule.

15 Q Did you and Mr. Berg discuss what kind of
16 a program of repayment of the stolen money you would
17 have since you were signing a demand note which ordinarily
18 could be called at any time?

19 A No.

20 Q You didn't ask him?

21 A No.

22 Q And he didn't tell you?

23 A No.

24 Q And between that day and this day how much
25 have you paid?

1 22 jgrf 227

J. Zander-cross

2 A I would have to amplify, there was an amendment
3 to the note later that I had requested.

4 Q I will come back to an amendment in a minute.
5 First tell me whether amended or unamended between that
6 day and this day how much have you paid?

7 A Nothing.

8 Q Nothing?

9 A Nothing.

10 Q That means nothing by way of \$95,000 of stolen
11 money, right?

12 A That is right.

13 Q And that means nothing by way of 6 percent
14 interest on \$95,000 worth of stolen money?

15 A That is correct.

16 Q Have you talked to Mr. Berg about when you are
17 going to start your schedule of payments?

18 A No.

19 Q You talked about an amendment. When was the note
20 signed?

21 A I believe it was in a similar time period to
22 my resignation. I don't remember if it was before or
23 after.

24 (Continued on the next page.)

25

1 1 jqrfr 3 am 228

J. Zander-cross

2 Q You resigned, you said, your officership and
3 perhaps your directorship in April '75 but you didn't
4 leave the premises as an employee until November.

5 Do you associate the signing of that note with
6 April or November 1975?

7 A April '75.

8 Q And when in terms of time did the amendment come
9 along?

10 A Sometime possibly a couple of months later.
11 I made the request I believe of Mr. Jacobs but I would not
12 like it to work a hardship where they could demand the
13 entire \$95,000 at one time because that would work a
14 hardship and I would appreciate consideration of that.
15 So there was an amendment to the effect that any monies
16 used to repay that loan would have to come out of
17 my compensations.

18 Q April 1975 you resigned your officership,
19 you resigned your directorship, right?

20 A Yes.

21 Q And you signed a note on demand payable for
22 \$95,000, right?

23 A Yes.

24 Q Two months later you want to have Mr. Jacobs,
25 this is Max or Jerry?

1 2 jgrf 229

J. Zander-cross

2 A Jerry.

3 Q -- Jerry Jacobs understand that this note promising
4 to repay what you had stolen was a hardship case because
5 they might call it upon you on demand, right?

6 A Well, I remember -- I was more concerned if
7 something happened to me because I know this was prior
8 to my going on an overseas trip and I said if something
9 happens, if I drop dead my estate would have problems
10 to pay that money at one time and I would like to work
11 it on this other type of arrangement.

12 Q You were concerned that if you died and your
13 estate had whatever it had in it that that might compel
14 your estate to pay what you had stolen, is that your
15 statement?

16 A I thought that would be the case.

17 Q And so you asked Mr. Jacobs, you were concerned
18 about this -- by the way, your estate was for the
19 benefit of your children, wasn't it, in large part?

20 A My will, yes.

21 Q These very same children into whose bank
22 accounts you had put the stolen money, right?

23 A Yes.

24 Q And you were concerned lest these children
25 and/or your estate should have to pay it back

1 3 jgrf 230

J. Zander-cross

2 if you died and you went to see Mr. Jerry Jacobs and you
3 put this before him?

4 A Yes.

5 Q And you had a suggestion, did you?

6 A Yes, it was my suggestion.

7 THE COURT: It is time for lunch, ladies and
8 gentlemen.

9 2:00 o'clock, please.

10 (Jury left courtroom.)

11 MR. FRIEDMAN: May we have an instruction
12 that the witness not confer with government counsel or
13 representatives during any recess?

14 THE COURT: I don't want you talking to
15 government counsel or any representative from the government
16 until the time that the cross examination is finished,
17 do you understand that?

18 THE WITNESS: Yes, I do.

19 THE COURT: All right.

20 (Luncheon recess.)
21
22
23
24
25

1 pm jgrf 231

AFTERNOON SESSION

2:15 p.m.

(In open court, jury present.)

J A C K Z A N D E R, resumed the stand

and testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. FRIEDMAN:

Q Mr. Zander, if I remember correctly, at the lunch recess we were talking about or were ready to talk about the amendment to the arrangement that you had requested two months after you signed the demand note for \$95,000. As I remember what you said, you said something to the effect that you were concerned that it might be called upon demand and you wanted something tied to your compensation.

Do I have that substantially correct?

A Yes.

Q By the way, in April 1975 which was at least six months or more after you first started to see Mr. Jerry Jacobs to tell him your story, were you still on regular salary with your employer?

A Yes. Over six months -- in that discussion I had with Mr. Jacobs. I don't remember just when was it.

1 jgrf 232

Zander-cross

2 It was in the fall of 1974.

3 Q That is what I remember you saying. In any event,
4 since that time, since the fall of 1974 coming right
5 through to April 1975 nobody had done anything to Jack
6 Zander in terms of his compensation, had they?

7 A No.

8 Q What was your compensation at the time that you
9 went in to see Mr. Jerry Jacobs with your story?

10 A It was about \$37,000 a year. It was in that area.

11 Q As the president of Sportservice you were earning
12 \$37,000 a year in total compensation from any or all of
13 the companies, is that correct?

14 A Yes.

15 Q Did you have any fringes?

16 A Use of an automobile.

17 Q An automobile?

18 A Yes.

19 Q Did you use that in part for private use?

20 A Yes.

21 Q Did you pay taxes on that?

22 A I furnished all my own gasoline. I paid for all
23 the gasoline.

24 Q Did you pay taxes on the free-furnished car
25 that you had from the company to the extent that you used

jqrf 233

Zander-cross

it for private affairs rather than for business?

A No.

Q Apart from a car what other fringes did you have, if any?

A None.

Q Did you have in this corporate structure a profit-sharing plan of some kind?

A No, there was not.

Q Did you have a pension plan of some kind?

A There was a pension plan.

Q Were you at the time that you went to see Mr. Jerry Jacobs in the fall of 1974 a part of the pension plan group?

A Yes.

Q And were contributions being made on your account to that group?

A Yes.

Q And they had been made, had they not, over a period of time?

A Yes.

Q And you had an interest in some expectancy under the pension plan or your estate did?

A Yes.

Q Were there any other things that you got from

1 jgrf 234 Zander-cross

2 the company? Blue Cross, Blue Shield?

3 A Yes, Blue Cross and Blue Shield.

4 Q Major Medical?

5 A Just Blue Cross and Blue Shield.

6 Q Anything else that you can think of that was one
7 of the features or advantages of your employment with
8 this company?

9 A Well, if I wanted to go to the racetrack I could
10 call them and they would set aside four seats in the
11 clubhouse for me to sit there.

12 Q Anything else you can think of?

13 A No.

14 Q Is that it?

15 A Once they gave me -- once they had a club box
16 in a football stadium and once I went to that box.

17 Q Let's come to the time then a couple of months,
18 as I remember what you say, after April 1975 when you asked
19 for an amendment. The amendment you wanted was that not-
20 withstanding anything that you signed before this \$95,000
21 note, you didn't want to have any obligation to pay back
22 this allegedly stolen money unless you were being
23 compensated by the company? Explain that to me a little bit.

24 A It was that the monies that were owed could be
25 taken out of my compensation in any amount. It didn't

1 jgrf 235

Zander-cross

2 limit the amount. It just said that the monies that
3 I owed could be taken out of my compensation.

4 Q And if you had no compensation then they could
5 not take anything out?

6 A I don't know.

7 Q Isn't that what you had in mind, you wanted
8 to have a source for the repayment of this \$95,000 but
9 that source, as you thought of it, had to be Emprise or
10 Sportservice continuing to pay you money?

11 A That would be correct.

12 Q So it was like an insurance policy for you.
13 You said in substance to the fellows up at Sportservice,
14 "Look, if you want me to pay this back you got to promise
15 to keep on paying me money." Isn't that what it came to?

16 A Well, it came to more than that. There was a
17 point where when we were talking about this note, I also
18 indicated to Mr. Berg that at some time I would be agreeable
19 to not ever go into business, that is to go to a competitor.
20 That was something indicating that I would be willing to
21 be on a noncompetitive basis in consideration of this.

22 Q I am going to get to that, Mr. Zander,
23 this noncompetition agreement. But I want to know whether,
24 putting that aside for the moment, whether the arrangement
25 that you proposed as an amendment to the arrangement that

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Zander-cross

had been made in April 1975 was intended to assure you that any alleged obligation you had to pay back would last only as Sportservice or Emprise or any other part of this corporate system was paying you money?

A Yes.

Q When you asked for the amendment, to whom did you ask?

A I believe I initially asked Mr. Jacobs and he advised me to see what I could work out with I believe Mr. Berg or Mr. Kraus, which is our house counsel. I can't recall if it was one or both where one passed it on to the other. I am not clear.

Q At the point where you signed that agreement or the note for \$95,000, which was April, which was some six months approximately after you first told your story to Jacobs, had any arrangement yet been made for you to get out entirely as an allegedly dishonest employee?

A I don't know.

Q Hadn't somebody said, "Look here, you have come and told us that you have stolen, according to you, \$95,000, \$100,000."

Hadn't anybody said, "That is cause for us to get you out of here, you might do it again"?

A Nobody told me that.

1 jgrf 237

Zander-cross

2 Q Nobody raised it with you?

3 A Nobody mentioned anything like that.

4 Q By April 1975 when you resigned your officership
5 in Interborough and/or Sportservice, had they set a time
6 yet when you were going to be finally gone?

7 A No.

8 Q Had they even talked to you yet about when you
9 would be finally gone on account of what you had allegedly
10 done?

11 A No.

12 Q Did you go talk to Mr. Berg or Mr. Krause about
13 this amendment?

14 A Yes, one or the other.

15 Q Did you tell them, "Look I have talked to Mr. Jerry
16 Jacobs about getting some change in this arrangement that
17 we have made and he told me to come talk to you so we
18 can work it out"?

19 A Yes.

20 Q Did you talk to any lawyer about it on your
21 behalf before you raised it either with Jacobs or before
22 you went to see either Berg or Krause?

23 A No.

24 Q After you put your request to them did they agree?

25 A Ultimately they agreed.

1 jgrf 238

Zander-cross

2 Q Did it take them some time?

3 A Yes, it didn't occur immediately. It took some
4 time.

5 Q Did there come a time when this amendment was
6 put in writing?

7 A Yes.

8 Q Do you have a copy of that writing?

9 A Yes.

10 Q Do you have it here?

11 A No.

12 Q When was it signed?

13 A Sometime after that April 1975 -- sometime after
14 I signed the note.

15 Q I understand that. You said April '75 you signed
16 the note, two months later you went and asked for a change.

17 A I remember signing the note. I am not sure
18 if that came before my requested resignation from the
19 various officerships in April or after.

20 Q I understand that. My question to you now is
21 April 1975 you signed the note. Two months later you
22 say you asked for an amendment. They told you to go speak
23 to some people. You did. There came a time when there
24 was an amendment made in writing. My question to you
25 is in relation to a time two months after April when

1 jgrf 239

Zander-cross

2 did they finally come to make up this writing which
3 constituted the amendment?

4 A Possibly in June or July 1975.

5 Q Now in June or July 1975 did you sign a piece
6 of paper which constituted the amendment?

7 A I don't know if it was my signature on it or the
8 signature of a representative of Sportservice.

9 Q Somebody signed it, though?

10 A Yes.

11 Q As of the time that somebody signed it, whether
12 it was yours or somebody on behalf of Sportservice,
13 had anybody yet talked to you about when you were going
14 to be out of that place?

15 A No.

16 Q So you were drawing your regular \$37,000 a year
17 salary through at least June 1975?

18 A Yes.

19 Q How did you first find out, when I say how,
20 from whom or by what means did you first find out that
21 you were no longer going to be employed after November?

22 A Mr. Carmichael in the early part of November or
23 middle of November one day asked me what my plans were
24 for that day, was I going to be out for anything or would
25 I be in the office and I told him I expected to be in the

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Zander-cross

office all day and he said good, there is a meeting we want to be held that we want you at, and I said okay.

Q Did you go to a meeting?

A Yes.

Q Who was at that meeting?

A Mr. Carmichael, myself and an attorney from Washington, D.C. who I had met for the first time that day.

Q What was his name?

A I don't remember.

Q Did they talk then about how long it would be before you were going?

A The attorney was the spokesman.

Q Did he introduce himself?

A I had met him because he was around the office and I happened to walk by and he was introduced to me a few hours earlier. He had been there a good part of the day.

Q Was he introduced to you as somebody who was working as an attorney for the corporations?

A Representing Sportservice, yes.

Q He was the spokesman. What, in substance, did he say to you?

A He told me that in view of the circumstances of

1 jgrf 241

Zander-cross

2 what I had done that the organization had no alternative
3 but to demand my resignation and that could be effective
4 as soon as possible. He advised me he preferred it to
5 be not later than the middle of December, but if possible,
6 earlier. He further advised me that the organization
7 was giving consideration to the 30 years of good service
8 that I had given and also the fact that they were
9 desirous that I don't enter into or join any other
10 company that might be competitive to them and he
11 verbally recited to me the terms and conditions of an
12 agreement that they were proposing. The agreement hadn't
13 been drawn.

14 He was proposing that basically to be an
15 agreement that would restrict me completely from working
16 for a competitive firm, giving advice to a competitive
17 firm, consulting with a competitive firm or ever going
18 into business for myself and making me available if
19 Sportservice wanted to call on me for anything and in
20 consideration of this they would compensate me for \$36,000,
21 or \$3,000 per month.

22 They also had some very, very tight -- well,
23 that was all they said at that discussion.

24 Q Between the time that you first saw Mr.
25 Jacobs to tell him your story one year at least earlier,

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2 that is to say sometime in the fall of '74 had
3 anybody given instructions to the public at large, by
4 that I mean the people who worked at Emprise, the people
5 who worked at Sportservice, to the effect that Zander
6 is to be kept out of any involvement of important corporate
7 decisions or activities?

8 A No.

9 Q Was there any announcement made to at least the
10 officers of Emprise or Sportservice to the effect that
11 Zander had said that he was a thief and a person who had
12 defrauded the company of over— at least \$100,000 and
13 therefore he should not be regarded as somebody trustworthy
14 for the discussion of corporate business in this more
15 than one year interim?

16 A What is the question?

17 Q Did anybody ever say that or announce that
18 to any of the officers of Emprise or Sportservice?

19 A I wouldn't know. Not in my presence.

20 Q And you never heard it?

21 A I never heard it.

22 Q Before November 1975 when you met this attorney
23 who you can't remember but who was nevertheless the company's
24 attorney, right?

25 A Yes.

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Q Had you been making sounds or saying things to the effect that you were contemplating leaving Sportservice or Emprise or going into some kind of competitive business?

A Not to anyone verbally, no.

(Continued on the next page.)

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2 Q So what we have then is that although you haven't
3 said a word about leaving and nothing had been done to
4 change your status except that you resign your office-
5 ships in April '75, everything was otherwise exactly the
6 same with you and with Emprise or Sportservice in November
7 '75 as it was in the fall of 1974, right?

8 A No.

9 Q Not right?

10 A No.

11 Q What penalty had you suffered except for signing
12 a note?

13 A I was released of all my responsibilities
14 gradually, turning them over to the other people in an
15 orderly fashion.

16 Q Beginning when?

17 A That may have begun the early part of 1975.
18 I would say perhaps -- no, probably more in May or June
19 '75.

20 Q Certainly if this came at all it came only
21 after you had resigned your officerships, right?

22 A Yes.

23 Q And did you see anything put out in writing for
24 circulation among officers or important employees of
25 Emprise or Sportservice which said in substance Zander is

1 2 jgbr 245

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2 being phased out, Zander is not to become involved in
3 things and therefore have that in mind and involve him
4 as little as you can, maybe not in words but substance?
5 Did you ever see a memorandum circulated to that effect?

6 A Not a memorandum.

7 Q Did there ultimately come to be an agreement
8 with you about this non-compete clause?

9 A Yes.

10 Q In writing?

11 A Yes.

12 Q Did you have a lawyer look at it?

13 A No.

14 Q You weren't worried about what it provided,
15 were you?

16 A I reviewed it myself.

17 Q You weren't worried about what it provided,
18 were you?

19 MS. STRAUSS: Objection, the witness answered.

20 THE COURT: He didn't answer the question.

21 This time maybe he will.

22 A Yes.

23 Q You were worried?

24 A Yes.

25 Q Did you try to get hold of Mr. Hollman, your

3 jqbr 246

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1
2 lawyer, to see whether he could give you some advice about
3 whether or not that agreement was one fit for your signa-
4 ture?

5 A No, there was a clause in the agreement that
6 I didn't like, that wasn't clear to me, and I discussed it
7 with Mr. Carmichael who had signed the agreement and he
8 drew an amendment or a clarification of that clause to my
9 satisfaction.

10 Q My question was though did you speak to or
11 try to speak to Mr. Hollman about reviewing that agreement?

12 A No, I did not.

13 Q Since the end or some time in November 1975
14 have you been collecting \$3,000 each and every single
15 month from Sportservice?

16 A Yes.

17 Q How did they get that money to you?

18 A They mail it to me.

19 Q Have you worked a good number of days since
20 that time for Sportservice?

21 A Not a good number of days.

22 Q You are getting \$1,000 less per year, if I
23 may phrase it for meritorious employment than you got
24 before employment after 30 years of working, is that
25 where we are at this time?

1 4 jqbr 247 J. Zander-cross

2 A Yes, but it is stagnant. It does not provide
3 for any increases.

4 Q The agreement which gives you \$36,000 for doing
5 nothing by obligation is stagnant, is that what you
6 said?

7 A In other words, if I were still working as
8 was the policy every year I would get a raise that amounted
9 to perhaps \$2,000 a year each year. That was a general
10 practice over the previous ten years and that of course
11 would cease or was ceasing because that agreement that I
12 have does not provide for any cost of living increase or any
13 other type of increase.

14 Q And you thought surely that you have all
15 people in light of the circumstances were entitled to cost
16 of living and to annual increases, is that right?

17 A No, I did not.

18 Q Tell me this: How many years is it that the
19 corporation, Sportservice, promises to pay you \$36,000
20 a year, \$3,000 every month?

21 A 7 or 8 years.

22 Q Does the agreement -- excuse me, do you have
23 the agreement here with you today?

24 A No.

25 Q The agreement has a starting point in it?

1 5 jchr 248

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2 A It has a starting point and it continues
3 until I reach the age of 65.

4 Q And so by the definitions of your age you
5 say that gives an indication of some seven or eight years'
6 length at the time you signed it?

7 A Yes, because I am now 59.

8 Q What happens when you are 65?

9 A Well, there was a pension plan, it was
10 outside the scope of Sportsercice, an outside plan that
11 had been put into effect I believe in 1969, some such
12 time, that provided that at the age of 60 or 65 that you
13 got so much per month as a pension.

14 Q So far as it stood when you left in November
15 1975 you expected and they agreed that when you got to
16 age 65 you would get your pension, right?

17 A I discussed it only with the persons in charge
18 of the pension. They had the records. They checked
19 it out with their account auditing firm and everything and
20 then they came back and indicated yes, I was entitled to
21 it and I had to choose -- they had one of two plans that
22 I could choose. One that was a straight pension start-
23 ing at 65 until death or one that guaranteed at least
24 ten years. In other words, if I was 66 and died my bene-
25 ficiary would receive the other 9 years and so there was

1 6 jqbr 249 J. Zander-cross

2 a choice of those two pension arrangements.

3 Q How much was involved in that, Mr. Zander?

4 A If I remember correctly about 1,000 or \$1100
5 a month, in that area.

6 Q Let's be sure about one thing. When did the
7 payments of \$3,000 a month start?

8 A They were supposed to have started December 1st.
9 Because of some book work or something the actual
10 December payment didn't get paid until some time in
11 January.

12 Q And you have received it each and every month
13 since?

14 A Yes.

15 Q And how much have you paid back out of the
16 compensation?

17 A Nothing.

18 Q The nothing part of it, did that happen
19 pursuant to some discussion that you had with some officer
20 or representative of Sportservice?

21 A No. There was a general discussion at some
22 point that the indebtedness, if I would possibly be
23 forgiven -- if I fulfilled the obligation of that non-
24 competitive clause that wasn't put in writing, though,
25 that was just something -- it wasn't a firm commitment, or

1 7 jqr 250

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2 anything. It was part of the discussion.

3 Q Let me hear about that. Who told you that
4 you were going to get even a better deal than you had
5 when you were supposedly working for a living?

6 MS. STRAUSS: I object to counsel's comments
7 like "Let me hear about that." This is not proper
8 questioning.

9 THE COURT: It is a little flowery but go ahead.

10 Q Who told you that?

11 A I think I first breached it to Mr. Jacobs.
12 This is before I had the other agreement.

13 Q Before you had which other agreement?

14 A Before I had that employment agreement in
15 November.

16 Q Yes.

17 A And I said I am sure that there would be
18 considerable value, among other things, if I at some
19 future time entered into a non-restrictive clause that
20 might forgive this thing and he said "Well, why don't you
21 talk to Berg about it." And then I mentioned it to Berg
22 and Berg said "Well, it has some merit but let's leave
23 it go for a while" and that was the extent of it.

24 Q That was before November?

25 A Yes.

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2 Q Before you even had been told that you weren't
3 going to work there any more?

4 A Yes.

5 Q And you were then talking, you say, to Mr.
6 Berg or Mr. Jacobs?

7 A I mentioned it to Mr. Jacobs and he said talk
8 to Berg.

9 Q You mentioned to Mr. Jacobs "Wouldn't it be nice
10 if you were to give a promise that if the day and time
11 ever came, which you had no plan for, that you were
12 to leave Sportservice that you would promise them faith-
13 fully that you wouldn't compete with them or enter into
14 a competing business, that is what you suggested, right?

15 A Not in those type of words.

16 Q Of that substance, Mr. Zander. Was that the
17 substance?

18 A Not in that substance.

19 Q You tell me the substance.

20 A I pointed out that I felt it would be good
21 business on their part to have that type of commitment
22 from me.

23 Q A commitment that you would not compete with
24 them?

25 A That I would not join a competitive company

1 jqbr 252 J.Zarler-cross

2 or compete with the, both.

3 Q And you told them this before November,
4 before any question had been raised about whether you were
5 going to stay in their employment, right?

6 A Yes, that is correct.

7 Q And Mr. Jacobs said, it is worth talking about,
8 go see Mr. Berg, right?

9 A Yes.

10 Q When you spoke to Jacobs about this latest
11 idea of yours did you tie it to the idea that if he
12 went along with it you would be forgiven the \$95,000 that
13 you had signed a demand note for in April?

14 A It wasn't firmly -- there was no firm commit-
15 ment, no.

16 Q But that is what you proposed?

17 A Yes.

18 Q And you didn't reject it out of hand.
19 He said "Go see Mr. Berg," right?

20 A That is correct.

21 Q So you were going to get, according to this,
22 if it came to pass, a salary or compensation for not
23 working, right, \$3,000?

24 A That is not correct.

25 Q All you were looking for at the time was

1 jqbr 253 J.Zander-cross

2 forgiveness of \$95,000, is that right?

3 A In consideration of when I retired at that
4 time I had no knowledge that I was going to be fired --
5 when I retired, because it was my intent to retire at
6 65 regardless because that is when my pension would take
7 effect, if I retired I would guarantee in consideration
8 of that type of forgiveness that I would not give my
9 services to a competitive firm or go into a competitive
10 business myself.

11 Q In 1975 you were 57?

12 A I was born in 1918. You figure it out.

13 Q I make it to be 57 give or take a year, subject
14 to correction if I am wrong.

15 A All right.

16 Q So what you were saying to Mr. Jeremy Jacobs --
17 or was it Max?

18 A No, not Max. I can't tell you how much of that
19 detail -- I didn't give that much detail to Jerry Jacobs.
20 I went more into it with Mr. Berg where I pointed out the
21 advantages.

22 Q I am going to come to it.

23 I want to get in my mind clearly what you
24 talked to Jerry Jacobs about. You said it would be
25 worthwhile for the company to have my promise not to

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J.Zander-cross

1 compete or go into a competitive business when I
2 retire some eight years hence and if that sounds like
3 it is a good thing to you, the consideration which you
4 would give me is to forgive me the \$95,000 if I kept my
5 word, right?
6

7 A Yes.

8 Q So obviously, Mr. Zander, you didn't plan to
9 pay a nickel under that proposal at least until they
10 could see whether you were as good as your word, that is
11 to say after you were 65, right?

12 A If they accepted the proposal.

13 Q You were going to have signed a note on demand,
14 as you described it first, but now you were going to change
15 the deal if they accepted it to the point where they would
16 get nothing for you on account of this \$95,000 until you
17 retired and if you kept your word they would never get it?

18 A Yes. But that was never formally drawn up
19 or accepted.

20 Q You mentioned something about that and I was
21 interested. You said this was not put in writing but
22 it was agreed to?

23 A No.

24 Q What was it?

25 A After I went to Mr. Jacobs he said, "Why don't

1 jqbr 255 J.Zander-cross
2 you talk to Berg about it". Berg said that that
3 sounds like it might have merit but let's wait awhile.
4 And it more or less dropped but it was part of a
5 discussion.

6 Q What were you going to wait for according
7 to Mr. Berg?

8 A I don't know. I didn't pursue it further.

9 Q You were content, you were-'t paying anything
10 back?

11 A That is correct.

12 Q So finally there came a time when they called
13 you and they talked to you and they talked to you about a
14 non-competitive agreement only this time you were going to
15 get \$36,000 a year rain or shine, right?

16 A Yes.

17 Q What happened with this idea about your proposal
18 of being forgiven the \$95,000?

19 A I never brought it up.

20 Q How does it stand?

21 A Pardon?

22 Q How does it stand as of today? Is it a deal
23 or isn't it a deal?

24 A Right now it is not a deal.

25 Q Would you tell me, Mr. Zander, why you

1 jqbr 256 J.Zander-cross

2 haven't paid back out of at least two years of \$36,000
3 a year a nickel of the money?

4 A It hasn't been requested.

5 Q Oh, it hasn't been requested. You are waiting
6 for the request, is that it?

7 A Yes, I am.

8 Q Have you talked to anybody about when the
9 request might come?

10 A No.

11 Q Do you expect the request soon?

12 A I don't know.

13 Q Do you expect it soon?

14 A I don't know.

15 Q Is there any way in which we might possibly
16 before you finish your cross examination get a look at
17 this agreement, this note, this amendment?

18 A I would imagine Sportservice would have a
19 copy of it.

20 Q When you went to see Mr. Berg tell me what you
21 told Mr. Berg about this idea of yours?

22 A I told him that I thought it would make good sense
23 and good business on the part of Sportservice that if I
24 agreed forever, in other words, where I could never at
25 any time join a competitive company or go into business

1 jqbr 257 J.Zander-cross

2 or that competitive business my promising that by
3 agreement would more than compensate for the possibility
4 or for the amount involved.

5 Q What did Mr. Berg say?

6 A He said that might have merit but I think we
7 should wait awhile and talk about that later.

8 Q And what you proposed by Mr. Berg by definition
9 included your being kept on at your present salary until
10 you got to this time when you retired. By you were going
11 to collect \$37,000 a year each and every year until age
12 75, according to your proposal and you would be forgiven
13 the \$95,000 debt as well, right, and at age 65 you walk
14 yourself into a pension. Do we have it right now?

15 A Yes.

16 Q And Mr. Berg said let's wait awhile?

17 A Yes.

18 Q When did he next talk to you about it?

19 A He didn't.

20 Q But he came to you for someone came to
21 you with this agreement for non-competition?

22 A Yes.

23 Q And the agreement for non-competition said you
24 were to get \$3,000 each and every month until you
25 retired, among other things?

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J.Zander-cross

A Until age 65, yes.

Q Did you say when you saw that agreement or when they described it to you , "Hey, fellow, it's very nice that you want to give me \$36,000 ever year until I am 65, but how about the other part of what I suggested, the business if I am good and if I stay that I am forgiven the \$95,000?"

A I never mentioned it. I am not even sure at this moment whether the two parties that were in the room were aware of it. I don't say they were or weren't. I don't know.

(Continued on next page.)

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2 Q You didn't mention it again?
3 A No.
4 Q It never was talked about after that?
5 A No.
6 Q Do you have any fringes left at the present
7 time?
8 A No.
9 Q No car?
10 A No.
11 Q No major medical?
12 A No.
13 Q No Blue Cross?
14 A No -- I have Blue Cross that I pay for myself.
15 Q Now I want to come back to you to Mr. Hollman.
16 Shifting back in time, if you will.
17 A Yes.
18 Q You went to see, as I remember, Mr. Berg,
19 and talked to Mr. Berg, and then there was a second meeting,
20 as I remember what you said, involving Mr. Hollman and
21 Mr. Berg. Who set that meeting up?
22 A I believe Mr. Berg set it up.
23 Q And he summoned you to it?
24 A He summoned me to his office.
25 Q And it was some time before the end of 1974?

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2 A Yes. I believe so. I can't be sure if it was
3 December of '74 or January of '75.

4 Q Tell me, was Mr. Hollman there when you arrived
5 with Mr. Berq?

6 A Yes.

7 Q And how was he introduced to you?

8 A I had met him earlier.

9 Q Where had you met him earlier?

10 A I had seen him in the office. I think I had
11 previously mentioned at one time that I walked with
12 Mr. Jacobs to Mr. Hollman and he introduced me.

13 Q Apart from that time?

14 A Aside from that time? I had seen him around
15 the office. I don't know what business he was on. And
16 I would nod to him once I met him. But other than that,
17 I don't recall anything else.

18 Q You say, by the way, that you didn't know
19 what business he was on. Did you know that Mr. Hollman
20 had been a former government employee?

21 A I knew he was from Washington, but I didn't
22 know specifically --

23 Q Did you know that he had been formerly an
24 Assistant United States Attorney and the head of a Strike
25 Force?

1 mpbr 261 J. Zander-cross

2 A No, I don't believe so.

3 Q Did you ever hear that?

4 A I don't recall anything like that.

5 Q Did anybody ever tell you what kind of work
6 or what area of the companies' activities Mr. Hollman's
7 work touched on? Just yes or no.

8 A Yes.

9 Q Did it have to do with state regulatory bodies,
10 agencies?

11 A I don't think so.

12 Q All right, sir.

13 Now, coming back with the meeting with Berg
14 and Hollman. Hollman was there with Berg when you arrived.
15 Tell me how he was introduced or why it was explained
16 that Mr. Hollman should be there at a meeting to which you
17 were summoned with Mr. Berg.

18 A Mr. Berg had used Mr. Hollman to make contact
19 with the federal agencies or U.S. Attorneys concerning my
20 situation -- concerning my situation as it pertains to
21 Jola.

22 Q Is that what Mr. Berg told you?

23 A Yes.

24 Q He said he had already gone to Mr. Hollman
25 to make contact with the federal authorities in connection

1 mpbr 262 J.Zander-cross

2 with your situation?

3 A Maybe I am skipping a meeting. There was a
4 meeting. At this meeting Mr. Berg and Mr. Hollman had
5 advised -- had told me that they were interfering --
6 they wanted -- they wanted to cooperate with the U.S.
7 authorities, with the U.S. --

8 MR. FRIEDMAN: If your Honor please, may I have
9 an answer to my question?

10 THE COURT: Yes. Read the question.

11 (Question read.)

12 A Yes. I skipped my -- my recall skips a meeting.
13 In other words, I went ahead of a third meeting. In other
14 words, there was a second meeting.

15 (Continued on next page.)

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1 1 mprf 2b pm 263

J. Zander-cross

2 Q A second meeting between your meeting with Mr.
3 Berg along and your meeting with Messrs. Berg and Hollman?

4 A Yes. There was a second meeting with Mr. Berg
5 and Hollman.

6 Q Excuse me. A second one after the one we are
7 talking about now?

8 A No.

9 Q Before it?

10 A Before it.

11 Q All right. Let's back up.

12 A -- where --

13 Q Excuse me. Let me put a question to you. First
14 you met Berg along?

15 A Yes.

16 Q This you did several weeks after you told your
17 story to Jeremy Jacobs, is that right?

18 A Yes.

19 Q And you talked to Berg and the next meeting you
20 had was a meeting with Hollman and Berg?

21 A Yes.

22 Q And who summoned you to that meeting?

23 A Mr. Berg.

24 Q All right. When you got there, was it at his
25 office?

1 2 mprf 264

J. Zander-cross

2 A Yes.

3 Q All right. Did he tell you then what Mr. Hollman
4 was doing with him that had reference to you?

5 A No, not specifically at that time.

6 Q Well, did you discuss your situation at that time?

7 A Mr. Berg -- Mr. Hollman knew of the situation.

8 Q Somebody had told him of your situation?

9 A Yes.

10 Q Told him of what you allegedly had done?

11 A Yes.

12 Q All right. Did Mr. Berg say what Mr. Hollman
13 was doing there, what was he there for?

14 A He was -- because he was in New York.

15 Q Yes.

16 A He was representing Sportservice in New York,
17 because that is where the investigation was taking place.

18 Q All right, sir. Mr. Berg, the company's outside
19 lawyer, said to you, "Mr. Zander, look, this Mr. Hollman,
20 he represents us in Sportservice in New York having
21 to do with Jola," right?

22 A Yes.

23 Q Having to do with your story of having stolen
24 \$100,000?

25 A Yes.

1 3 mprf 265

J. Zander-cross

2 Q All right. What did he want you to do with
3 Mr. Hollman?

4 A I don't remember whether it was Mr. Hollman or
5 Mr. Berg who said, who discussed a specific thing with
6 me, but the discussion was that they were -- that they
7 wanted -- they wanted me to cooperate with the U. S.
8 Attorney, and would I, and give them all the information
9 I had if I was -- on the basis if I was given immunity,
10 and I told them I would.

11 Q Well, did anybody say that they had already talked
12 to somebody at the U. S. Attorney's Office about that?

13 A No. They then wanted to know what I could
14 advise them of that -- in other words, what the government --
15 what information I had.

16 Q That might be interesting to the government?

17 A To the government.

18 Q That might get you immunity, right?

19 A Well, I don't know.

20 Q That is what they said? They said, "Look,
21 Mr. Zander, if you have got some things you might tell us,
22 we might take you to see an Assistant United States
23 Attorney and make it interesting enough by what you tell
24 so that we can work out an immunity."

25 MS. STRAUSS: That is in the nature of a

1 4 mprf 266

J. Zander-cross

2 summation and argument.

3 THE COURT: Yes. Sustained.

4 All right, let's take a recess.

5 (The jury left the courtroom.)

6 THE COURT: By the way, I have finished your
7 opinion. I don't want to go into it.

8 MR. FRIEDMAN: It doesn't have to be argued
9 this minute, and we will not be finished with Mr. Zander
10 today.

11 THE COURT: Well, I assume that.

12 MR. FRIEDMAN: Whenever it is convenient to
13 your Honor.

14 (Continued on the next page.)
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1 1 jqrfr 3a pm 267

Zander-cross

2 Q Mr. Zander, we were at the point of your first
3 meeting as you now recall it with Messrs. Berg and Hollman.
4 I think we were at the point as you had said in sub-
5 stance that they had told you that they were thinking
6 about going to make some kind of arrangement for
7 immunity and they wanted to know what you might have to
8 offer or to tell that might make somebody interested in giving
9 it to you.

10 Do I have that right substantively?

11 A I believe so.

12 Q You believe so?

13 A Yes.

14 Q Did you then proceed to tell them things that
15 might interest somebody? That is, as best you could.

16 MS. STRAUSS: Objection.

17 THE COURT: That is a little vague.

18 Q Did you then proceed to try to tell Messrs.
19 Berg and Hollman things that you thought would be of
20 interest to an Assistant United States Attorney in
21 connection with the possibility of getting some immunity
22 for yourself?

23 A Yes.

24 Q How long did this meeting last, approximately?

25 A Perhaps an hour or two.

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J. Zander-cross

W When the meeting was over had some definite arrangement been made about who was going to see whom about the possibility of immunity?

A I was not aware of what arrangements were going to be made.

Q I can't hear you.

A I was not specifically made aware of what arrangements were going to be made. By whom?

Q They were talking about possible immunity for you, were they not, Mr. Zander?

A Yes, but they did not tell me who was going to do what.

Q But at least you understood, did you not, that Mr. Hollman was going to be part of the doing, right?

A Yes.

Q On your behalf?

A Yes.

Q As a lawyer?

A Yes.

Q He was going to be your lawyer?

A No, that was not -- at that time he was not my lawyer. Mr. Hollman advised me that he could only represent me properly if and when I was granted immunity.

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J. Zander-cross

2 In that case he felt he could without a conflict of interest.

3 Q Otherwise there would be a conflict of interest,
4 is that right?

5 A I only repeat what Mr. Hollman told me.

6 Q So at that point are you saying that Mr. Hollman
7 said he could not represent you at the time of that meeting?

8 A He did not say he could not and he did not say he
9 could.

10 Q But he was going to go notwithstanding to see
11 about getting you a grant of immunity, right?

12 A Yes.

13 Q And you authorized him to do that?

14 A Yes.

15 Q That was going to take some time for him, wasn't
16 it?

17 A I don't know.

18 Q He had to go see somebody?

19 A I don't know how much time it takes.

20 Q But you understood it was going to take this lawyer
21 some time to do?

22 A Yes.

23 Q Was he also going to see about getting a possible
24 immunity for other people?

25 A I don't know.

1 jgrf 270

J. Zander-cross

2 Q Was that mentioned?

3 A No.

4 Q Did they talk for example about the possibility
5 of an immunity for Sportservice?

6 A I don't know.

7 Q Or for Interborough?

8 A I don't know.

9 Q Or for the Jacobs?

10 A I don't know.

11 MS. STRAUSS: Objection. The witness already
12 said what he knew about it.

13 THE COURT: That is permissible.

14 Q Did you have any discussion on that occasion in
15 Mr. Berg's office about who would pay Mr. Hollman for
16 the time and effort to go see somebody about possibly
17 getting you immunity?

18 A No.

19 Q Did somebody say don't worry about this, Mr.
20 Zander, the company is going to take care of Mr. Hollman's
21 bill?

22 A No.

23 Q It just wasn't mentioned?

24 A That is right.

25 Q Did you say, look, before you go, Mr. Hollman,
I better talk to you privately and get some understanding

1 jgrf 271

J. Zander-cross

2 from you about what these things entail, I don't understand
3 what it is you propose to do and how you propose to do it,
4 did you say that?

5 A No.

6 Q And Mr. Berg didn't suggest it?

7 A No.

8 Q So as far as you were concerned you were content
9 at the end of that meeting to let Mr. Hollman, whom you
10 understood could not be your lawyer until immunity had
11 been arranged for on your behalf, go off and speak
12 on your behalf about getting immunity, right?

13 A Yes.

14 Q Then there came this second meeting with Berg,
15 Hollman and you, right?

16 A Yes.

17 Q How long after the first, approximately?

18 A Two or three weeks. I don't remember exactly
19 how long, two, three weeks, something like that.

20 Q Incidentally, in the course of that reference
21 in the first Berg-Hollman and Zander meeting for possible
22 conflict of interest, did anyone raise the question of a
23 conflict of interest between a lawyer who represented
24 a company which according to your story should have a
25 claim against you to recover something like \$100,000,
and simultaneously representing you?

1 jarf 272

J. Zander-cross

2 A Are you asking me a question?

3 THE COURT: Did anyone mention that?

4 THE WITNESS: No.

5 Q That kind of conflict wasn't touched on?

6 A No.

7 Q Did you consider at that meeting or thereafter
8 what kind of situation you would be in being represented
9 by a lawyer who already represented your employer whom
10 you said you had stolen \$100,000 from and this lawyer
11 was thinking of representing you with reference to the
12 same subject matter?

13 A I didn't give it any thought.

14 Q And apparently, as far as you heard from Mr. Berg
15 or Mr. Hollman, neither had they?

16 A That is correct.

17 Q The next meeting you say took place a few weeks
18 later?

19 A Yes.

20 Q Were you summoned to it by Mr. Berg?

21 A Yes.

22 Q Did they give you a report on what had happened?

23 A Yes.

24 Q Did they say to you in words or in substance
25 that somebody had already been to see somebody and made

jqrf 273

J. Zander-cross

a deal or a tentative deal for immunity?

A Yes.

Q It had happened that fast? A few weeks.

A Yes.

Q And did they tell you immunity for what?

A Well, it was immunity from anything that I might say in testimony could not be used against me.

Q In the first meeting that you had with Berg and Hollman did you see either of those gentlemen making any notes?

A I don't recall seeing them make any notes.

Q Did they seem to have anything in writing before them to which they referred from time to time?

A I didn't notice anything.

Q By the time of the second meeting they had made some arrangement. Who had made the arrangement, did they tell you?

A Mr. Hollman had made the arrangements.

Q Had he already committed to it?

THE COURT: I am not sure he understands that.

MR. FRIEDMAN: I think it is a badly phrased question.

Q Did Mr. Hollman say to you when he came to the second meeting, look, Mr. Zander, I have been to the place

1 jgrf 274

J. Zander-cross

2 where I intended to go to try to work out an immunity for
3 you and I have done the deal?

4 A Yes.

5 Q And he hadn't spoken to you, had he, between the
6 first meeting and the second meeting?

7 A No.

8 Q He hadn't asked you at the point where he thought
9 he had an arrangement whether it was acceptable to you?

10 A When he advised that he was going to make the
11 effort I had indicated it was acceptable to me at that time
12 before he actually had done it.

13 Q So you authorized him then on your behalf to make
14 any deal that the federal authorities would be willing
15 to make to give you immunity?

16 A Yes.

17 Q Did you talk either in the first meeting with
18 Hollman or the second about how many different statutes or
19 crimes you were thinking about immunity on?

20 A No.

21 Q Was defrauding or mail fraud one of them?

22 A I didn't discuss any of them.

23 Q When Mr. Hollman came back and said I have done
24 this for you, Mr. Zander, everything is good, you are going
25 to be all set with an immunity, in substance he said that?

1 jgrf 275

J. Zander-cross

2 A Yes.

3 Q He had good news for you, right?

4 A Yes.

5 Q Did he tell you what the good news touched?

6 A Just that I had immunity.

7 Q About anything connected with Interborough,
8 Jola, anything you talked about there was going to be
9 immunity?

10 A He did not go into detail.

11 Q But did he say that much, at least?

12 A No, he just said I had immunity from any
13 testimony that I might give in the grand jury, any testimony
14 I might give to the U. S. Attorney, any testimony I
15 might give at this trial with the exception of course
16 of perjury.

17 Q Did he have any piece of paper that was supposed
18 to evidence or reflect this immunity that he had gotten for
19 you?

20 A No.

21 Q Did you ever see a piece of paper reflecting it?

22 A No.

23 Q When they told you about this immunity did
24 you then discuss whether or not this conflict or potential
25 conflict had now disappeared?

jgrf 276

J. Zander-cross

1 A Mr. Hollman advised me.

2 Q What did he advise you?

3 A That with my having been granted immunity if
4 I so desired he could represent me as well as Sportservice
5 without a conflict of interest.
6

7 Q Represent you in what respect?

8 A He did not say.

9 Q Did you ask him?

10 A No.

11 Q Did you ask him for example whether he would
12 represent you in connection with any further communications
13 with the government?

14 A I didn't ask him. The discussion was what I
15 just indicated. He asked me or he told me that if I so
16 desired he could represent me as well as Sportservice
17 in view of the fact that I had immunity providing I
18 was agreeable to it. I told him I was agreeable to it.
19 That is the sum and substance of the discussion.

20 Q Did you talk to him about whether anybody else
21 had had an arrangement for immunity as a result of his
22 going down to New York?

23 A No.

24 Q And he didn't volunteer anything?

25 A No.

1 jgrf 277

J. Zander-cross

2 Q He was going to represent you as your lawyer.
3 Did you sign a piece of paper with him?

4 A Yes, I believe I did sign something.

5 Q What kind of paper did you sign?

6 A I believe I signed something to the effect
7 that I was agreeable for his being representing me. I
8 don't remember the context of the paper.

9 Q Do you have a copy of it in your possession?

10 A No, I don't.

11 Q Do you have it at home?

12 A I don't think so.

13 Q What happened to it?

14 A They have it.

15 Q They never gave you a copy?

16 A I don't believe they did. I don't recall their
17 giving me a copy.

18 Q Was there any suggestive force by Mr. Berg or
19 anybody else on behalf of Sports service that you should
20 and would be well-advised to retain Mr. Hollman?

21 A No.

22 Q I suppose before you retained Mr. Hollman you
23 talked to him about what kind of fee obligations you would
24 be undertaking to him?

25 A No.

1 jqrfr 278

J. Zander-cross

2 Q He didn't raise that with you?

3 A No.

4 Q You didn't raise that with him?

5 A No.

6 Q Did Mr. Hollman devote some time to your affairs?

7 A I guess so. I don't know how much time he devoted.

8 He devoted some time.

9 Q He spent time talking to you?

10 A Yes.

11 Q On a number of occasions?

12 A Yes.

13 Q Here and in Buffalo?

14 A Yes.

15 Q And he has also gone places with you, hasn't he,
16 to see federal prosecutors or representatives?

17 A Yes.

18 Q And he sat in on conferences with you while
19 they interrogated you?

20 A Yes.

21 Q That took time?

22 A Yes.

23 Q From the beginning of your professional relationship
24 with Mr. Hollman until this day have you had a bill from him?

25 A No.

1 jqrf 279

J. Zander-cross

2 Q Have you paid him one penny for his legal
3 services to you?

4 A No.

5 Q Have you ever talked to him about whether you are
6 going to have a bill for these legal services that he is
7 rendering to you as your lawyer?

8 A Yes.

9 Q When?

10 A It came up just a couple of weeks ago. It was
11 not me that made the query.

12 Q Let's see where the various participants were.
13 Where were you when it came up a couple of weeks ago?

14 A I was with Mr. Hollman in Ms. Strauss' office.
15 Ms. Strauss asked Mr. Hollman if I -- I'm not sure --
16 Ms. Strauss asked me if I was paying Mr. Hollman for his
17 services to me.

18 Q She asked you that?

19 A Yes, I believe so.

20 Q And did you give an answer?

21 A I told her I don't know. "Why don't you ask Mr.
22 Hollman."

23 Q Then what happened?

24 A Mr. Hollman then said to me, "Have I sent you a
25 bill yet?" And I said, "No."

1 jqrfr 280

J. Zander-cross

2 And then he said, "Well, I don't intend to."

3 In other words, words to the effect that he would
4 not be billing me.

5 Q So the man had worked for you for some undetermined
6 extent, as far as we know now, from sometime in 1974,
7 late 1974 until now, which is a little bit past mid-1977
8 and it is all free?

9 A I did not pay anything.

10 Q You did not pay anything?

11 A I did not pay anything.

12 Q You did not and you will not?

13 A Based on what Mr. Hollman had mentioned in this
14 discussion a couple of weeks ago he would not be asking
15 me to pay anything.

16 Q Was that the first that you had heard that?

17 A That is the first I heard that.

18 Q Did Mr. Hollman confirm that to you in writing
19 at any point?

20 A No.

21 Q Did you mention to Ms. Strauss that letter that
22 you had signed for Mr. Hollman or that document that you
23 had signed?

24 A I am not sure.

25 Q Did Ms. Strauss -- incidentally, was Mr. Lippe

1 jgrf 281

J. Zander-cross

2 present at the time of this meeting, Mr. Lippe is the
3 gentleman sitting to Ms. Strauss' right.

4 A Mr. Lippe was present at most meetings. At
5 that particular time I am not sure if he was present.

6 Q Did Ms. Strauss or Mr. Lippe, if he was there,
7 make a note with respect to your statement or Mr. Hollman's
8 statement that you were not going to get a bill for legal
9 services?

10 A No.

11 Q You know that for a fact?

12 A Yes.

13 Q You have met, I take it, many times either with
14 Ms. Strauss or Mr. Lippe or predecessors or associates
15 of theirs, and I am saying this with respect to federal
16 representatives only, is that true?

17 A Yes.

18 Q For example, did you tell Ms. Strauss about your
19 note for \$95,000?

20 A I am not sure.

21 Q Did you tell Ms. Strauss about your amended
22 arrangement?

23 A No, I am not sure of that either.

24 Q Did you tell Ms. Strauss about your \$3,000 a
25 month until age 65 noncompetitive written agreement?

1 jgrf 282

J. Zander-cross

2 A Yes.

3 MS. STRAUSS: Your Honor, I don't know why we
4 have to go into this.

5 THE COURT: I will let him. Go ahead.

6 Q Did Ms. Strauss say anything to you about producing
7 a copy of that?

8 A No.

9 Q She didn't think that you should bring it with
10 you or say so?

11 A She didn't ask me to.

12 THE COURT: She didn't ask.

13 (Continued on the next page.)
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25

1 1 jqr 283 J. Zander-cross

2 Q I want to go back.

3 Well, you did tell her there was such a thing
4 in writing?

5 A Yes.

6 Q I want to go back with you, please, and
7 I want to find out as best you can tell me the number of
8 meetings that you have had with federal representatives.
9 But before I get to that I want to ask you one more
10 question. Do you have any relatives who work for Sport-
11 service or Emprise or any of the affiliates?

12 A Yes.

13 Q What relatives?

14 A I have a sister.

15 Q What is her name?

16 A Doris Chasen.

17 Q Doris Chasen. How long has she worked for
18 Sportservice or Emprise?

19 A Off and on 50 years.

20 Q 50?

21 A 50.

22 Q What is her position?

23 A She retired.

24 Q When?

25 THE COURT: What was her position before she
retired?

1 2 jqbr284

J.Zander-cross

2 THE WITNESS: She was a vice president.

3 THE COURT: Of what?

4 THE WITNESS: Sportservice. She was an
5 officer of Sportservice. I believe it was vice president
6 but I am not sure.

7 (In the robing room.)

8 THE COURT: That is the second time that name
9 Chasen has come up during the trial.

10 MR. FRIEDMAN: I don't remember the first.

11 THE COURT: The first one was in connection
12 with the World's Fair and some tie-in with your client.

13 MR. FRIEDMAN: Kagen, Judge.

14 THE COURT: All right, I am sorry.

15 (In open court.)

16 Q Do you remember when your sister retired,
17 approximately what year?

18 A I believe she retired the end of 1976.

19 Q In other words, she has gotten out of Sportserice
20 by way of retirement only since you have gotten out entirely,
21 is that right?

22 A She retired after I got out entirely.

23 Q You and she were co-officers of Sportservice
24 or a good number of years?

25 A I don't know what you mean by a good number of

1 3 jqbr 285

J.Zander-cross

2 years.

3 Q What was her area, if she had one, of special
4 responsibility as a vice president?

5 A Her responsibilities as a vice president didn't
6 change her responsibilities other than signing papers as
7 a vice president or officer.

8 THE COURT: What did she do?

9 THE WITNESS: Director of race track operations.

10 Q Had that been he specialty, so to speak, for
11 many years?

12 A Yes.

13 Q I want to get some impression, if you can
14 give it to me in any kind or found way or gross way, if
15 we were to talk about Sportservice and if we say
16 Sportservice we are not being particularly precise, there
17 is a Sportservice Corporation, isn't there, or there was
18 at the time we are talking about?

19 A Yes.

20 Q And you were the president of Sportservice
21 Corporation?

22 A Yes.

23 Q In addition to that company there were a whole
24 bunch of companies called Sportservice, like New York
25 Sportservice Corporation, right?

1 4 jchr 286

J. Zander-cross

2 A That is correct.

3 Q Or Delaware Sportservice Corporation, right?

4 A Yes.

5 Q You had a Sportservice Corporation in every
6 state in which you operated at that time, isn't that right?

7 A It wasn't always called Sportservice.

8 Q It had a name?

9 A Yes, it was a subsidiary.

10 Q The way you operated was that every state at
11 least had a separate subsidiary company to carry on the
12 operations of the family of companies, right?

13 A Yes.

14 Q You were an officer, for example, not only of
15 Sportservice but of New York Sportservice, right?

16 A No.

17 Q You were not?

18 A No.

19 Q Isn't it a fact that Sportservice Corporation
20 owned all of the subsidiary companies?

21 A Yes.

22 Q If I were to say, and this is just by way of
23 example, that I wanted you to focus on the year 1970, how
24 many employees would you say that Sportservice and its
25 subsidiary companies had to the nearest 10,000?

1 5 jqbr 287

J.Zander-cross

2 A You are referring to all over the country or
3 in the main office?

4 Q All over the country.

5 A 10,000, 20,000.

6 Q How about if we took it, let's say up through
7 the years, take it to 1973 or '74, to the nearest 10,000
8 as you can remember it and you were the president of the
9 company?

10 A I would say that the number of employees did
11 not materially change from '70 to '74 or '73.

12 Q Do you recall when at any time up to or in-
13 cluding 1974 Sportservice and its subsidiaries and the
14 Emprise group and the family, the whole collection of
15 companies, had as many as 40 or 50,000 employees?

16 A I don't believe they ever had that many.

17 Q I am not counting now people who worked
18 full time but that many employees at given times during
19 the year.

20 A Are you talking about turnover, in other words,
21 that worked at one time? I don't think there were that
22 many.

23 Q But pretty close?

24 A I would be giving you a wild guess. My wild
25 guess would be 25,000.

1 C jghr 288

J.Zander-cross

2 Q Employees in a year?

3 A Yes.

4 Q I want to know if you can recall, just give
5 me a number, if you please, how many meetings did you
6 have separately with Mr. Hollman alone from the time that
7 you first came into contact with him having to do
8 with these matters until this moment in time?

9 A Possibly a dozen.

10 Q I now want to know how many meetings you had
11 with Mr. Hollman at which other representatives or
12 representatives, I will put it that way, of the Federal
13 government, that is to say the IRS or Assistant United
14 States Attorneys were present?

15 A About the same number.

16 Q Another dozen?

17 A Yes.

18 Q How many meetings have you had, putting Mr.
19 Hollman aside, he is not present at all, how many meetings
20 have you had with representatives of the federal govern-
21 ment, either IRS or Assistant United States Attorneys
22 in the same period of time? But not with Mr. Hollman
23 present that is.

24 A I would have to amplify on this. There was
25 about three times when he was not present but there

1 7 jchr 289

J.Zander-cross

2 were a number of times when he was present half the
3 time.

4 Q By way of adding to our list we have now three
5 more meetings where you met with representatives of the
6 Federal government but Mr. Hollman wasn't there at all?

7 A Yes.

8 Q So we have something in the order of 27 meetings,
9 27 separate meetings either with Mr. Hollman alone or with
10 Mr. Hollman and representatives of the Federal government
11 or representatives of the Federal government alone, is that
12 right?

13 A The meetings with -- when the Federal govern-
14 ment was present, when I had meetings with them Mr. Hollman
15 was merely an observer. He was present. The meeting wasn't
16 with Mr. Hollman, it was with the Federal government.

17 Q And Mr. Hollman was present?

18 A Yes.

19 Q Tell me first, did you have a meeting or
20 meetings with Miss Strauss or anybody else from the
21 government in order to prepare you to give testimony in
22 this case?

23 A Yes.

24 Q How many such meetings did you have?

25 A I had about eight meetings with Miss Strauss.

1 8 jqr 290

J.Zander-cross

2 O Were those meetings all held in New York?

3 A Yes.

4 O Was Mr. Hollman present at any of them?

5 A Yes.

6 O Can you tell me how many of those meetings

7 Mr. Hollman was present at?

8 A I believe he was present at about five of
9 those meetings.

10 O Did these take place on different days?

11 A Yes.

12 O And did the days follow one another or
13 were they totally separate meetings separated by times
14 and returns to home?

15 A Sometimes one followed the other and sometimes it
16 didn't.

17 O When did you have your first meeting
18 with Miss Strauss?

19 A I had my first meeting on a Monday and Tuesday
20 of the early part of August. I had my second meeting
21 the following week on Wednesday and Thursday. The third
22 meeting was the following Monday and I don't believe I met
23 with her on Tuesday. I met with her Wednesday evening
24 and I believe Thursday evening. I believe that was the
25 last meeting.

J.Zander-cross

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I met with her at lunch Friday.

Q When you returned here on Sunday at 4 o'clock did you have any meetings with anybody?

A With Miss Strauss. That was the last meeting.

Q This past Sunday?

A Yes.

Q Beginning at about what time?

A 5 o'clock.

Q Was Mr. Hollman there?

A No.

Q Can you tell me which of the meetings that you have just described, those meetings with Miss Strauss were attended by Mr. Hollman?

A He was at all the meetings but he was not at the meeting Wednesday evening, Thursday evening, Friday at lunch he came in to see Miss Strauss. I did not -- he did not attend any meeting. That is what I spoke to you about earlier, and he was not at the Sunday meeting.

Q Who arranged for these meetings?

A Miss Strauss.

Q With whom?

A With me.

Q Were any of them arranged by Mr. Hollman?

1 jqbr 292 J.Zander-cross

2 A I believe the first meeting was arranged by
3 Mr. Hollman, the first meeting.

4 Q That is the Monday and Tuesday meeting in early
5 August?

6 A Yes.

7 Q Was Mr. Lippe in attendance at each of these
8 meetings for all or part of the time?

9 A He was in attendance all or part of the
10 time.

11 Q Was any other IRS representative present at
12 each of these meetings or any of them all or part of the
13 time?

14 A No.

15 Q Did anybody make any notes in the course of
16 any of those meetings or all of those meetings?

17 A The only notes I observed was Miss Strauss
18 when she made a phone call. There was a phone that
19 would ring and she would answer it and made some sort
20 of note on some sort of date pad. The only other thing
21 I noticed was when she was asking me questions she some-
22 times would make a notation or scratch out something.

23 Q She had something before her to which she
24 referred and when you gave an answer she might have
25 scratched out something?

1 jqbr 293

J. Zander-cross

2 A Upon occasion.

3 Q The purpose of these meetings, and you talked
4 about something like 8 of them, was to go over with you
5 your testimony in this case, is that right?

6 A Well, it was initially to acquaint her with
7 the background because she had entered into it a year
8 and a half after it had taken place.

9 Q Hadn't you acquainted previous Assistant
10 United States Attorneys with the case?

11 A Yes, but Miss Strauss asked me to review from
12 memory just whatever I could remember from a year and a half
13 ago when the case had been temporarily suspended.

14 Q And you did that?

15 A I did that.

16 Q How many meetings did you have with Mr. Schwartz?
17 That is the former Assistant United States Attorney.

18 A I would say about four.

19 Q Did he make any notes when you spoke to him?

20 A I don't recall. I hadn't observed him or
21 noted it. I only was more observant because Miss
22 Strauss pointed out to me that during our discussion she was
23 going to be making notes.

24 Q Did she say that?

25 A She said that to me.

1 jqbr 294 J.Zander-cross

2 O She said she was specifically going to make
3 no notes of what you said?

4 A Of any of our discussions, that is correct.

5 O And did she tell you this the very first time
6 you met with her on that first day in August?

7 A Yes, she told me that was a policy of hers.

8 O Of hers?

9 A That was her policy, not to take any notes,
10 and she would not be taking any notes.

11 O Had Mr. Schwartz told you about a
12 similar policy?

13 A No, he didn't mention anything.

14 O After you left Miss Strauss on any occasion did
15 you talk to Mr. Hollman about what had gone on inside.
16 Just yes or no.

17 A Are you referring to when he wasn't present?

18 O When he was present.

19 A No.

20 O Did you meet with Mr. Hollman before you went
21 in to see Miss Strauss on any of these occasions?

22 A Yes.

23 O When was that?

24 A I would meet with him perhaps a half hour or
25 an hour before my meeting with Miss Strauss and then we

1 jgbr 295 J.Zander-cross
2 would drive down to Miss Strauss' office together in
3 his car.

4 Q Where did you meet?

5 A In his office.

6 Q Where is that?

7 A His office is on 39th Street.

8 Q Is that the procedure that you always
9 followed, that is at any time that Mr. Hollman was
10 going to be with you at one of these review sessions
11 you and Mr. Hollman met before the session among your-
12 selves, talked and then went down to see Miss Strauss?

13 A With the exception of those sessions I mentioned
14 to you and the Sunday sessions.

15 MR. FRIEDMAN: If your Honor please, I am
16 going to go on a new subject.

17 THE COURT: Okay, that is just about time.
18 You timed that very well.

19 Ladies and gentleman, be good enough, please,
20 to remember my rules on media and please don't discuss
21 the case. 10 o'clock tomorrow, ladies and gentlemen.

22 (Jury left the courtroom.)

23 MR. FRIEDMAN: I make the same kind of
24 request for the instruction that you gave the witness this
25 afternoon.

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J.Zander-cross

2 THE COURT: I don't you to talk to agents,
3 prosecutors, about anything else in this case.

4 THE WITNESS: I just come here tomorrow at
5 10 o'clock?

6 THE COURT: Yes.

7 THE WITNESS: And wait in the same room?

8 THE COURT: Yes.

9 (Adjourned to Tuesday, August 30, 1977,
10 at 10:00 o'clock a.m.)

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2 United States of America

3 v.

75 Cr. 337

4 Irving Goldman

5 New York, New York

6 August 30, 1977
7 10:10 a.m.

8 (Trial resumed.)

9 - - -

10 (In open court; jury present.)

11 THE COURT: Would the witness take the witness
12 stand.

13 (At the side bar.)

14 MR. FRIEDMAN: Judge, can we talk about Emprise
15 in that conviction that your Honor referred to yesterday,
16 I think it will just take a few minutes if you want to
17 hear me.

18 THE COURT: Can you continue on without go-
19 ing into that right now?

20 MR. FRIEDMAN: Yes.

21 THE COURT: Then we will take a break.

22 MR. FRIEDMAN: Yes. I would like to talk
23 about it some time before the end of the morning.

24 THE COURT: Yes. Before that.

25 MR. FRIEDMAN: Thank you, Judge.

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J.Zander-cross

2 (In open court.)

3 J A C K Z A N D E R, resumed.

4 CROSS EXAMINATION (Continued)

5 BY MR. FRIEDMAN:

6 Q Mr. Zander, yesterday you testified about
7 your salary as at the time that you left the employ of
8 Sportservice. I believe you said the salary was \$37,000
9 a year.

10 A In that general area, yes.

11 Q All right.

12 I think that you also said somewhere along the
13 line that there was some kind of a custom or habit in the
14 company of raising people's salaries by some annual
15 amount, like \$1500 or perhaps \$2,000, do I have that
16 right?

17 A That was the annual practice as it pertained
18 to me.

19 Q As it pertained to you. Was it more like
20 \$2,000 annually that you got by way of an increase or
21 \$1500 or don't you recall?

22 A It was between \$1500 and \$2,000.

23 Q Had that been a practice that had been in
24 effect at Sportservice for some several years before
25 November, 1975?

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J.Zander-cross

2 A Yes.

3 Q Let us focus back to 1970 which is a rough
4 and even five years earlier. Is it the fact that as of
5 1970 you as president of this company that employed some
6 25,000 people were getting something under \$35,000 a
7 year by way of salary?

8 A That could be correct, yes.

9 Q Do you have some kind of independent recol-
10 lection of approximately how much you were receiving as
11 salary in or about the year 1970?

12 A I would say somewhere between 25 and 30,000.

13 Q All right.

14 Take it back another five years to 1965,
15 between 1965 and 1970 had the company also been giving
16 annual raises in salary to people such as you, its
17 president?

18 A Yes.

19 Q Were they roughly the same magnitude?

20 A Would you repeat it?

21 THE COURT: What you mean is that were they
22 roughly the same percentage as opposed to the other person's
23 salary?

24 THE WITNESS: I don't know the increases of
25 other people.

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J.Zander-cross

Q I am talking about yourself alone. I am not asking you to tell me about anybody else except yourself. Between '65 and '70 did you receive annual increases in Salary something in the magnitude of between \$1500 and \$2,000 a year?

A Yes.

Q So that if we take that off the level that you say you were at in 1970 as of 1965 you were earning somewhere between 15 and \$20,000 per year in your capacity as an officer of Sportservice, right?

A During those years my average increase was \$25 a week. I would have to calculate based on that. It would be close to \$1500, perhaps.

Q Close to \$1500 per year increase. All right. If I multiply that by five years that is \$7500. If I take \$7500 from what you said before, like \$27,000 as of 1970, I am down around \$19,500, roughly, roughly, let's say between \$20,000 as of 1965, does that seem to fit with your recollection?

A That could be correct.

Q That is what you were earning in 1965 as Chairman of the Board of Directors of Sportservice, right?

A No.

Q Were you not chairman of the Board of Directors

1 rsbr 301 J.Zander-cross

2 at that time?

3 A Of Sportservice?

4 Q Yes. Excuse me.

5 A No.

6 Q Interborough. I withdraw that.

7 Were you Chairman of the Board of Directors
8 of Interborough at that time?

9 THE COURT: '65?

10 MR. FRIEDMAN: 1965, Judge. Thank you.

11 A I don't believe so.

12 Q Were you an officer of Interborough at that time,
13 1965?

14 A I may have been a vice president.

15 Q All right.

16 Q Did you have an office at all in Sportservice
17 at that time, 1965?

18 A Yes.

19 Q What office?

20 A I believe I was vice president.

21 Q You were a faithful and loyal employee at that
22 time, 1965, of some 20 years standing, right?

23 A Yes.

24 Q You were one of the highest officers in the
25 entire corporate group, right, at that time?

1 rsbr 302 J.Zander-cross

2 A Yes.

3 Q Did you have any other sources of income to
4 supplement your \$20,000 a year salary at that time?

5 A Only interest from stocks and bank interest,
6 things like that.

7 Q You had a portfolio of stock, did you?

8 A Yes. I had some stocks.

9 Q You had bank accounts, savings accounts?

10 A Yes.

11 Q Which you had accumulated over the years when
12 you were earning less than \$20,000 per annum?

13 A That I had accumulated over the years from
14 the beginning -- from the time when I was a young person.

15 MS. STRAUSS: Your Honor, may we approach the
16 bench?

17 THE COURT: Yes.

18 (At the side bar.)

19 MS. STRAUSS: Your Honor, I have tried not to
20 register too many objections but Mr. Friedman has been
21 on the course of cross examination for almost an entire
22 day. I can't see that it is relevant and pertinent that
23 he be examined by the history of all his savings, salaries
24 and all that. I don't see how this is relevant to the
25 testimony.

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J.Zander-cross

THE COURT: This is a man who it is said stole \$95,000 or \$100,000. The question is basically if he was wealthy, if he wasn't wealthy, why didn't he do it before. It is clearly relevant.

MS. STRAUSS: All right, your Honor.

(In open court.)

O Although you told me about the stock portfolio and your savings account, that wasn't really what I asked you. I asked you whether you had other sources of income apart from your salary as such. Did you have other deals on which you were involved which resulted in money for you?

A There was one, I don't know if it is called a deal, but I had become a very personal friend of a person whom I had formally dealt with from Sportservice where we purchased some properties, an amusement park. The result, I became a very personal friend of this particular elderly gentleman. He used to -- he sought me out as his companion.

O Excuse me. I don't hear too well. Would you speak a little louder.

A He sought me out.

O If your Honor please, can we have the reporter read the answer as far as given?

1 rsbr 304

J.Zander-cross

2 (Record read.)

3 Q Continue, please.

4 A He ultimately gave me what he called a lifetime
5 gift of \$30,000.

6 Q Let's start with this. What year was this,
7 Mr. Zander?

8 A I believe this would have been possibly
9 1965 or 1966.

10 Q You say he gave you a lifetime gift of \$30,000?

11 A He called it a gift. He had indicated that he
12 wanted to leave, put me in his will. I told him, I didn't
13 think that -- it would embarrass me to wonder why he was
14 putting me in his will. At that time he wasn't getting
15 along with his family, his children. They had resented
16 the fact that he had sold these properties to Sportservice.
17 Then some time after that he gave me this as a gift.

18 Q You mean it wasn't embarrassing if he gave you
19 \$30,000 during his lifetime, is that right?

20 A Yes.

21 Q That was all right?

22 A That was all right.

23 Q But it would embarrass you if after he died
24 he left you \$30,000 in his will, is that right?

25 A Yes.

1 rsbr305 J. Zander-cross

2 Q All right.

3 The \$30,000 Mr. Zander, in what form did you
4 receive that?

5 A In cash.

6 Q Did you declare it on your income tax?

7 A I considered it as a gift.

8 Q Did you declare it on your income tax?

9 A No.

10 Q You received this \$30,000 in 1965 as best
11 you can recall?

12 A Yes.

13 Q Now tell me, please, some of the details about
14 this amusement park. Sportservice was in the business
15 among other things of buying amusement parks, am I right?

16 A Yes.

17 Q What's the name of this amusement park or parks?

18 A At the time it was called Glen Park Casino.

19 Q Glen spelled?

20 A G-l-e-n.

21 Q Park Casino?

22 A Yes.

23 Q Located where?

24 A In Williamsville, New York.

25 Q Who was this generous benefactor of yours?

1 rsbr 306

J.Zander-cross

2 A His name was Harry Altman.

3 Q A-l-t-m-a-n?

4 A Yes.

5 Q Tell me what the genesis of your relationship
6 with Altman was, Sportservice bought something from Altman?

7 A Yes.

8 Q What did it buy?

9 A The amusement park and the land.

10 Q Did it buy it outright?

11 A No. It bought it outright, yes.

12 Q Paid a price to Mr. Altman for the amusement
13 park and the land?

14 A Yes.

15 Q About how much did it pay?

16 A I believe -- I don't know the exact figures.
17 It was about three or \$400,00 plus a management agreement
18 that gave him a large percentage of the profits. It gave
19 him a management contract as well. He would get 50 or 60
20 percent of the profits over --

21 Q 50 or 60 percent?

22 A Something in that area, over a ten-year
23 period.

24 Q Let me see if I understand. Sportservice
25 your company. Was it Sportservice or New York Sportservice,

1 rsbr 307 J.Zander-cross

2 by the wav?

3 A I don't recall which corporation.

4 O One or the other, is that correct?

5 A Yes.

6 (Continued on next page.)

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1 1 rsrf lb am 308

J. Zander-cross

2 Q One or the other of those two companies bought
3 this, Glen Park Casino, from Mr. Altman and paid him
4 something like \$300,000 to \$400,000, am I right so far?

5 A Yes.

6 Q As part of the deal, as part of the purchase
7 you agreed to give this man 50 to 60 percent of the profits
8 of the operation as you, and I say you, I mean Sportservice
9 ran it after the acquisition, is that right?

10 A After what?

11 Q You were going to give him 50 to 60 percent
12 of the annual profits that were realized as the result
13 of your operation of the amusement park, right?

14 A It would be our operation. It would be run with
15 all the powers, all the power of operation -- the manner
16 of operation would be by Mr. Altman.

17 Q You bought it from him but one of the parts
18 of the deal was that Mr. Altman was going to stay around.
19 He was going to run this thing even though you people
20 owned it, right?

21 A Yes.

22 Q He was going to manage it just like he had before,
23 right?

24 A Yes.

25 Q In return for that you were going to give

1 2 rsrf 309 J. Zander-cross

2 him 50 to 60 percent of the profits?

3 A Yes.

4 Q Am I right so far?

5 A Yes.

6 O All right.

7 You had some relationship to this amusement
8 park once you bought it, right?

9 A Yes.

10 Q You were the man at Sportservice who was in
11 charge of supervising and administering and being sure
12 that Mr. Altman's operation was true and honest and faithful
13 and loyal and straight, right?

14 A Yes.

15 Q That was your business to ride herd on Mr.
16 Altman and make sure he didn't steal from you?

17 A Yes.

18 Q That he reported his receipts honestly, right?

19 A Yes.

20 Q Tell me at what point after you bought it
21 and after he was operating it you and he came to the
22 agreement that you as the person who was supposed to watch
23 after him was going to get \$30,000 in cash from him?

24 A We didn't come to an agreement. He offered it
25 to me as a token of friendship.

1 3 rsrf 310

J. Zander-cross

2 Q Did you say Mr. Altman, if it is one thing in
3 the world that I, an honest person, could not accept
4 from you is a \$30,000 cash gift when I am supposed to be
5 looking after you?

6 A No. I didn't say that.

7 Q Did you tell him it would be terribly embarrassing
8 and pose a great hazard to you with the Jacobs family
9 if anybody ever found out that you, Jack Zander, faithful
10 employee for 20 years were found to have taken \$30,000
11 from the man you were supposed to be policing, did you
12 tell him that in substance?

13 A No.

14 Q All right.

15 Did you say to him when he offered you this
16 \$30,000 in cash, which wouldn't embarrass you like
17 being read in his will, did you say wait a minute, it is
18 very generous, but I must check with my boss, Mr. Jacobs,
19 to find out whether he thinks it is okay for me to receive
20 a \$30,000 gift of that kind, did you tell him that?

21 A Yes.

22 Q You did tell him that. Because you wouldn't dream
23 of taking it, would you, unless you checked, right?

24 A Yes.

25 Q Because you realized that to accept something

1 4 rsrf 011

J. Zander-cross

2 from somebody whom you were supposed to be supervising
3 or superintending for something which you shouldn't do
4 and wouldn't do unless you checked it with the owners of
5 Emprise and Sportservice, right?

6 MS. STRAUSS: Objection. Argumentative.

7 THE COURT: Answer the question.

8 A Yes.

9 Q Did you then check with somebody at Sportservice
10 or Emprise, one of the family, to see whether they had any
11 objection to your taking this money?

12 A Yes.

13 Q Who did you check with?

14 A Louis Jacobs.

15 Q The father?

16 A Yes.

17 Q The founder of the enterprise.

18 What did you tell him?

19 A I told him what Mr. Altman wanted to do for
20 me. I just wanted to be sure that there was no misunder-
21 standing and Mr. Jacobs responded that, "Look, if he
22 wants to give you something, take it."

23 Q Did you talk to him about the conflict of
24 interest?

25 A I didn't see any conflict of interest.

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J. Zander-cross

2 Q I see.

3 Anyway, Mr. Jacobs, when you told him what the man
4 proposed to do, he said, if he wants to give it, you take
5 it, it is fine. That is the substance?

6 A Yes.

7 Q You had only met Mr. Altman how long before you
8 took this money?

9 A A few years.

10 Q You had only started -- you bought the thing from
11 him in '65, is that correct?

12 A We negotiated for two years.

13 Q You negotiated for two years, then you finally
14 consummated the acquisition and, but it was a very short
15 time after the purchase of the amusement park that this
16 \$30,000 gift made its appearance, is that right?

17 A No.

18 Q How long after you--

19 A I would say it must have been at least a year or
20 longer.

21 Q All right.

22 Here is one little extra piece of income that
23 you told us about. Did you have any other deals or arrangements
24 where you received money for other things of value, I
25 don't want you to be stuck by the word money, if it is

1 6 rsrf 313

J. Zander-cross

2 valuable. Any other thing in the whole history of your
3 life, with respect to the Jacobs family?

4 A I received money from on-the-job training program
5 when I joined Sportservice shortly after. I got into
6 something called on-the-job training program, the government
7 augmented my salary.

8 Q While you were learning the business of how
9 to take care of Sportservice's interest the government
10 helped subsidize your training. Very good.

11 Apart from that, I am thinking more, Mr. Zander,
12 if you get my drift, about things like \$30,000 gifts.

13 MS. STRAUSS: Objection, your Honor.

14 THE COURT: Put the question to him without
15 that statement.

16 MR. FRIEDMAN: Yes, Judge.

17 Q Mr. Zander, I want to know whether you had any
18 other incidents or events in your professional life
19 where you received other than your normal salary income,
20 putting aside whatever income you might have received
21 from interest on savings accounts or dividends from
22 stocks that you owned, any other things of value apart
23 from working?

24 A I don't know if you call it value. There was
25 something where sometime in 1965, '66, or '67, I don't

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J. Zander-cross

2 remember when Mr. Goldman had wanted to take what he
3 referred to as garbage money. That meant people that left
4 things in lockers that were never claimed, once every
5 couple of months they would be sold, somebody would come
6 around and they would sell whatever they had for \$75
7 or \$100.

8 He asked me, Mr. Goldman asked me whether that
9 could, he could have that to defray expenses. I had
10 mentioned, that to Mr. Louis Jacobs. I said Mr. Goldman
11 wanted this. He asked what it amounted to. I had
12 checked based on previous records, a matter of a
13 few hundred dollars a year.

14 He said, "It is all right, let him have it."

15 Then sometime later Mr. Goldman, every once in
16 a while would give me part of that what he called garbage
17 money, \$50 or \$40 or \$60. That would maybe happen a
18 few times a year or something like that, which he told
19 me would cover my expenses that would supplement my
20 basic expense policy that I was on. He said it was a
21 modest one -- I once mentioned.

22 Q Did you tell Mr. Jacobs about your receiving
23 portions of this locker garbage money?

24 A No. Because the initial discussion --

25 Q I didn't ask you. Did you tell him?

1 8 rsrf 315

J. Zander-cross

2 A No.

3 Q The lockers were operated by whom?

4 A Under the supervision of Mr. Lynch who in turn
5 had someone working under him.

6 Q Apart from that, are there any other incidents
7 where you received money or things of value apart from
8 your salary, apart from the interest on savings accounts,
9 apart from dividends on stock that were related in some
10 way or other of the business of Sportservice or any of
11 the other companies?

12 A No. None that I can recall.

13 Q Do you have any doubt?

14 A No.

15 Q How about your children, did they receive anything
16 at any time apart from what you say they received, did they
17 receive anything of value or by way of money?

18 A Whenever they, I gave them from time to time,
19 money gifts under the Gift of Minors Act.

20 Q I am talking about their receiving money
21 or things of value that had some connection or origin
22 with people of whom your company dealt with, things of
23 that sort?

24 A No.

25 Q Did you ever form any corporations that received

1 9 rsrf 316

J. Zander-cross

2 anything of value from anybody that had any relationship
3 or business with Sportservice?

4 A No.

5 Q By the way, did you have a personal safe deposit
6 box in Buffalo?

7 A Yes.

8 Q Have you had it since at least 1965?

9 A I believe I did.

10 Q I recall that you testified something the first
11 day of your testimony here to the effect that you formed
12 a corporation that was supposed to be as you thought of
13 it useful to hide your interest in Jola, do you remember
14 that?

15 A Yes.

16 Q What was the name of that corporation?

17 A Robrian.

18 Q Robrian?

19 A Yes.

20 Q Is it the use of your children's first names,
21 the first portions of it, Robin and Brian?

22 A Yes.

23 Q Where was that formed?

24 A Where?

25 Q Yes.

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2 A In Buffalo.

3 Q Did you do that all by yourself?

4 A No. I had one of the attorneys do it for me.

5 Q One of the attorneys do it for you?

6 A From Sportservice.

7 Q From Sportservice?

8 A Yes.

9 Q He formed this corporation for you that you were
10 going to use to steal as you say from Sportservice?

11 A Yes.

12 Q What was this witting or unwitting accomplice's
13 name?

14 MS. STRAUSS: Objection.

15 THE COURT: Yes.

16 Q What was the name of the attorney who worked
17 for Sportservice whose services you enlisted?

18 A Mr. Almasi.

19 Q Alm-i? A-l-m-a-s-i.

20 A M-a-s-i.

21 Q He was an attorney with whom you had worked
22 for a long time?

23 A Yes.

24 Q He was in Mr. Kraus' department?

25 A Yes.

1 11 rsrf 318

J. Zander-cross

2 Q How long had you been working with Mr. Almasi?

3 A A few years.

4 Q As of 1965, Mr. Zander, would you say you had been
5 associated with him for at least five years?

6 A I am not sure. I don't remember exactly when.

7 Q He was one of Mr. Kraus' associates?

8 A He worked under Mr. Kraus.

9 Q Mr. Kraus was the head of the legal section?

10 A Yes.

11 Q Mr. Almasi was one of his assistants?

12 A Yes.

13 Q He was a full-fledged lawyer?

14 A Yes.

15 Q You went to see him and you said in substance,
16 Mr. Almasi, I have need of a corporation, right?

17 A Yes.

18 Q What happened then?

19 A I told him that I would like to form a New York
20 corporation.

21 Q Did you tell Mr. Almasi, after all three years
22 Mr. Almasi I am going to leave this company and I am going
23 to go into a new business, and that's why I want you to
24 form a corporation?

25 A No. I didn't tell him that.

1 12 rsrf 319

J. Zander-cross

2 Q What did you tell him? Since you weren't
3 leaving, what was it that you as a full time employee of
4 Sportservice wanted to have a corporation for?

5 A No.

6 Q Did you tell him what business it was going to
7 engage in?

8 A No.

9 Q Don't you know, Mr. Zander, that before you can
10 write or get a corporate charter from the State of New York
11 you have to describe to the authorities, the Secretary
12 of State, the Department of State, what the powers of the
13 corporation are to be, what business it is going to engage
14 in?

15 A If that was the case, and Mr. Almasi asked me
16 that, whatever response I made to him, I don't remember
17 what the response was at this time.

18 Q You don't remember even what you told him that
19 the company was going to engage in?

20 A No.

21 Q What was it engaged in, by the way?

22 A At the time I didn't know what it was engaged in.

23 Q What it was going to engage in according to
24 your most inner thoughts in helping you to steal?

25 A I was contemplating it as a possibility, yes.

1 13 rsrf 320

J. Zander-cross

2 Q Mr. Zander, it was beyond the realm of contempla-
3 tion of possibility, you told Mr. Almasi to form the
4 corporation, right?

5 A Yes.

6 Q He did?

7 A Yes.

8 Q So you had been, you had a corporation?

9 A Yes.

10 Q You still don't remember what it was nominally
11 to do?

12 A I don't remember.

13 Q Do you have papers on this someplace?

14 A Yes.

15 Q Where?

16 A I turned the papers over to Ms. Strauss, Mrs.
17 Strauss.

18 MS. STRAUSS: Your Honor, we can make them
19 available as exhibits if defense counsel wants them.

20 THE COURT: Yes. Mr. Friedman, have you
21 seen them?

22 MR. FRIEDMAN: I don't believe so, Judge.

23 THE COURT: All right, folks. We will take
24 10 minutes right now.

25 (Jury excused, recess.)

1 1 jgrf 2a 321 J. Zander-cross

2 (In the robing room.)

3 THE COURT: Question No. 1 is where is the
4 certificate of incorporation?

5 MS. STRAUSS: I asked Mr. Zander to bring me
6 whatever documents he had and that is what he brought me.
7 We did not go to the Secretary of State and get the
8 certificate of incorporation. I don't have a copy. I
9 believe he brought me whatever he had.

10 MR. FRIEDMAN: If your Honor please, if you
11 look at that folder you will see that what he had, the
12 officers and employees and lawyers and his sister, the vice-
13 president of Sportservice also had a part of the work,
14 was all done from Sportservice's office.

15 But let me, if I may, interrupt and I don't mean
16 to interrupt if your Honor wants to pursue that question,
17 but you asked Ms. Strauss when this came up whether she
18 had the papers on this or whether there were any papers
19 and she said yes, and you asked did we have them before,
20 and she said yes.

21 MS. STRAUSS: I am sorry. I didn't understand
22 your Honor's question.

23 THE COURT: I gather that you had not.

24 MR. FRIEDMAN: Not one. I want you to know how
25 I am absolutely certain about it. I don't want to tax

1 2 jgrf 322

J. Zander-cross

2 Ms. Strauss with things that are part of the history of
3 other AUSAs. If I may open up this folder, one of the
4 things we did early in this case to be absolutely certain,
5 if the question ever arose, to tell the Court with
6 precision what we have seen and what we have not seen --

7 MS. STRAUSS: It is conceded you did not see
8 it.

9 MR. FRIEDMAN: -- was to get a sequential
10 numbering machine and have people sit in the office
11 where they made these pieces of paper available and
12 every piece of paper produced was whacked and every one has
13 a number.

14 THE COURT: I wondered where the heck the numbers
15 came from.

16 MR. FRIEDMAN: You can look at this material from
17 top to bottom and there is no number and Mr. Wang adds
18 and Mr. Udell subscribes because they saw the papers,
19 we have never seen that before.

20 It is clearly in my opinion Brady material,
21 clearly Brady material, and we should have had it in
22 compliance with your Honor's order on June 27, 1977 or
23 within a matter of days thereafter, at most, when we
24 didn't have it and on that ground I renew my motion again
25 for dismissal of this indictment because there has been

1 3 jqrfr 323

J. Zander-cross

2 a continuing reflection in the history of this trial of
3 the government's absolute and sensational, in terms of
4 impact, in terms of size, failure to comply with your
5 Honor's direction about Brady and that was a failure that
6 was in the face of our repeated attempts to call it to
7 your Honor's attention as our belief that there was more
8 in the face of which the government continued to contend
9 that there was no more.

10 We expressed to your Honor the reasons for our
11 belief but of course since the material was in their
12 possession and not ours we could not tell you chapter
13 and verse this existed or that existed.

14 I will add, if your Honor please, my associates
15 tell me, and I don't say this as a matter of my own
16 knowledge of the law, that Brady material need not be,
17 as I understand it, something which is in writing.
18 If it is material which is exculpatory or tends to be
19 exculpatory of the defendant and the material that was
20 told yesterday by Mr. Zander about the arrangements with
21 respect to his noncompete agreement, the arrangements
22 with respect to the note, those things which were told
23 by Mr. Zander according to him to the government's
24 representative before trial, none of these things were
25 communicated to us by the government.

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J. Zander-cross

2 The first time we found them out was when we
3 interrogated Mr. Zander yesterday on cross examination
4 and I regard that, Judge, if you please, as a further,
5 clear, incontrovertible evidence of the fact that the
6 government has failed to comply with your Honor's order
7 and has simply arrogated to itself the right to overrule
8 your Honor's order and for that kind of conduct the
9 indictment should be dismissed.

10 THE COURT: Do you want to be heard?

11 MS. STRAUSS: Your Honor, I don't think that the
12 fact that Mr. Zander formed this corporation in the course
13 of his getting ready to participate in the Jola Candy
14 Company is exculpatory of Mr. Goldman. It is certainly
15 something that can be used effectively on cross examination.

16 THE COURT: Which you knew about?

17 MS. STRAUSS: I learned about this -- I don't
18 know whether it was the second series of interviews
19 I had with Mr. Zander or whether it was the first.
20 But I did in the course of debriefing him learn from him
21 upon my questioning him, the first time the government had
22 learned that, that he had formed this corporation. At
23 which point I asked when he next came down to New York,
24 will you please bring the documents with him, and I made
25 the decision that I would elicit it on direct examination

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J. Zander-cross

2 because I thought it was material that was relevant to
3 the development of the conspiracy and how he had joined in.

4 THE COURT: Don't you recall that the law requires
5 that purpose clauses be set forth in a certificate of
6 incorporation?

7 MS. STRAUSS: I am unfamiliar with that, your
8 Honor.

9 THE COURT: It just so happens to be.

10 What was the purpose of this corporation?

11 I can't tell from the papers. All it is is a dissolution.

12 MS. STRAUSS: Isn't there some paper there on
13 formation of the corporation?

14 THE COURT: It is certainly not the certificate
15 of incorporation.

16 MS. STRAUSS: No, it is not, your Honor. Frankly,
17 that point didn't occur to me and we did not -- it never
18 occurred to me that the certificate of incorporation
19 would have anything more to it than any of these documents
20 have which frankly --

21 THE COURT: Those documents have nothing.
22 The certificate of dissolution stating there was no activity
23 of the corporation tells me nothing.

24 MR. FRIEDMAN: If your Honor please, there are
25 letters in there which show the correspondence on behalf

1 6 jgrf 326 J. Zander-cross
2 of the corporation came out of 703 Main Street which
3 is the office of Sportservices.

4 THE COURT: I am well aware of that. If you
5 also look you will see that Mr. Kraus was a notary public
6 on the certificate of dissolution.

7 MR. FRIEDMAN: And Mr. Almasi was the director.

8 THE COURT: I am well aware of that, too.
9 I am not too smart but I have a good memory.

10 How come these documents were not supplied
11 in any shape, manner or form before the trial to the
12 defense?

13 MS. STRAUSS: Frankly, your Honor, I thought that
14 what the important point that would be made is that
15 Mr. Zander had formed his guilty purpose at the time that
16 he did this and I would elicit that on direct examination
17 and I did not see --

18 THE COURT: Was his guilty purpose set out in
19 the purpose clauses of the corporation?

20 MS. STRAUSS: I assume not although, as I say,
21 I don't have the certificate of incorporation.

22 THE COURT: Don't you think it would be something
23 that you ought to have?

24 MS. STRAUSS: Well, frankly, your Honor, I thought
25 that the documents that related to the corporation did not
in and of themselves have any content or significance.

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2 I did not see the fact that the defense would be making
3 so much of the fact that the corporation was formed by
4 persons at Sportservices and apparently they were not
5 told what the purpose of the corporation was and I did not
6 see that as the tack that would be taken.

7 THE COURT: How do we know?

8 MS. STRAUSS: I have to say that it did not
9 occur to me they would make that use of it.

10 THE COURT: No, you said these people were not
11 informed as to what the purpose of the corporation was.
12 Yet the law requires that the purpose of the corporation
13 be set forth in the certificate of incorporation. How do
14 we know?

15 MS. STRAUSS: I have to say, Judge, none of those
16 things were going through my mind. I never even knew
17 that the certificate of incorporation would give that
18 information. It simply didn't occur to me that I should
19 try to obtain that and I did not. I asked Mr. Zander to
20 give me whatever was in his possession and I thought --

21 THE COURT: Where is the minute book?

22 MS. STRAUSS: I frankly did not even inquire.
23 I don't know whether there was one or there was not one.

24 As Mr. Zander explained to me, as he testified,
25 he formed the corporation. He did not use it but for having

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2 opened his safe deposit box under his name.

3 THE COURT: Where is the resolution permitting
4 that?

5 MS. STRAUSS: I don't know. Again, I don't know
6 if there is one, ever was one or not.

7 THE COURT: There has to be one, no bank would
8 take it without it.

9 MS. STRAUSS: Judge, I think to the extent those
10 things may have pertinence either the defense or the
11 government could at this point seek to obtain them.
12 I don't know that it would be impossible to do so.

13 MR. FRIEDMAN: If I had known about this in
14 accordance with your Honor's direction on June 27th
15 or 28th I might have found out. But since I find out
16 today it is rather difficult.

17 MS. STRAUSS: The government did not know about
18 the corporation on June 27th.

19 THE COURT: You knew about it before trial.

20 MS. STRAUSS: That is true. I am sorry that I
21 did not anticipate that the use of this would require
22 anything further. I did not see it as being Brady material
23 because I thought that what it really reflected on was
24 Mr. Zander's guilty conscience and getting ready to go
25 into the Jola Candy Company and in that respect --

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2 THE COURT: But you are claiming Sportservice
3 was defrauded. Yet you have here, at least in the
4 papers that you do have, an indication that all of the
5 people from Sportservice were up to their neck in this
6 corporation and knew about it.

7 If we had the purpose clause of the corporation
8 and it was directly competitive with Sportservice then
9 they knew that this guy was competing with Sportservice
10 through whatever means he was competing with them or at
11 least he had a corporation from which to do it. If they
12 knew it how could they be defrauded?

13 MS. STRAUSS: The real answer of what was going
14 on is that it never occurred to them that if Mr. Zander
15 who was a high executive of the company asked them to
16 form a corporation that there was anything about that that
17 should suggest that the corporation was being taken for
18 a ride with respect to anything. It would not be as strange
19 a thing for a lawyer and in a legal department like that
20 simply to go through the process of forming a corporation.
21 I think this is precisely what happened, simply because
22 Mr. Zander asked them to do it.

23 I don't think any of those people were in a
24 position to ask questions of Mr. Zander and I would think they
25 didn't. I think that is the real answer of what we want.

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2 THE COURT: Are you kidding? The kicker in the
3 whole thing is if there was stock distributed was it
4 distributed to the Emprise Corporation or to the Jacobs?

5 MS. STRAUSS: Stock in this company?

6 THE COURT: That is right.

7 MS. STRAUSS: Was to his children.

8 THE COURT: But how come not to Emprise? How
9 would a corporate lawyer say we will form the subsidiary
10 but we are giving it to my kids instead of to anybody else?

11 MS. STRAUSS: I don't think Mr. Zander was
12 representing this as corporate business. He was telling
13 the lawyers --

14 THE COURT: Go form a corporation, the purpose
15 of which is to compete directly with Sports service.

16 MS. STRAUSS: I think his testimony would be
17 it was a corporation he was going to use for his personal
18 purposes and that they were not --

19 (Continued on the next page.)
20
21
22
23
24
25

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2 THE COURT: He already testified that he
3 doesn't even remember what the purpose of the clause of the
4 corporation was. How can we tell without the certifi-
5 cate?

6 MS. STPAUSS: I don't have that, your Honor.

7 THE COURT: Don't you think you ought to get
8 it?

9 MR. STRAUSS: We will get it as soon as we
10 can.

11 MR. FRIEDMAN: If your Honor please, the
12 things your Honor has mentioned as well --

13 THE COURT: Well, we have all kinds of difficul-
14 ties.

15 MR. FRIEDMAN: If I may, Judge, this isn't the
16 only aspect of difficulty. Miss Strauss knew about the
17 documents, Mr. Hollman has been participating in terms of
18 helping Mr. Zander getting ready the arrangement and those
19 documents which are Brady material should have been pro-
20 duced. They haven't been produced. Nobody thinks to
21 produce them for us.

22 A man who is saying that he stole \$100,000, he
23 is able to continue his employment at \$1,000 less per year
24 plus a \$95,000 gift --

25 THE COURT: That is an argument for the jury

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2 and not for me.

3 MR. FRIEDMAN: I am saying there are papers
4 that reflect the arrangements that he made and Miss Strauss
5 knew about them and we haven't gotten them and they are
6 Brady material.

7 THE COURT: Do you have them?

8 MS. STRAUSS: I do not have the note of
9 indebtedness. After Mr. Friedman said in court yester-
10 day that he would like that produced before the end of
11 Mr. Zander's cross I did make a request to have that
12 sent down at the earliest moment. I don't know whether
13 it can be obtained today but we will have it here as soon
14 as we can.

15 THE COURT: How are you going to get the
16 certificate of incorporation?

17 MS. STRAUSS: We will serve a subpoena on the
18 Secretary of State.

19 THE COURT: How long do you think that will
20 take?

21 MS. STRAUSS: It may be filed somewhere in
22 the county offices. We can send an agent out to do it this
23 morning.

24 MR. FRIEDMAN: If those papers in the folder have
25 any meaning, there is some place up in Buffalo, if it is

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not Main Street it is on Delaware, where there are all the papers, the stock certificate book, a stock transfer book, a chart. Everything in those papers indicates there must be a copy there or at one time there was.

MR. STRAUSS: We will make a request for that as well.

THE COURT: But when?

MR. STRAUSS: I will send an agent out to do that work now.

THE COURT: Do you want to be heard on Emprise?

MR. FRIEDMAN: Yes, Judge.

THE COURT: Go ahead.

MR. FRIEDMAN: Your Honor, you read that not short Ninth Circuit opinion.

THE COURT: They split it up into three parts.

MR. FRIEDMAN: I want to make it clear to your Honor what I don't intend to do. I don't intend to invoke ethnicity or names of anybody that is supposed to sound like mob or allegedly mob. That is not what I have in mind by this offer. I want to make clear what I do have in mind.

The allegation and the charge against Emprise, which was for conspiracy, was that it conspired with others to hide an interest which Emprise was going to purchase in

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a casiono or hotel with a casino in Las Vegas knowing that the Nevada law prevented or barred Emprise from having such an interest because of other interests which it had. The indictment charges and it was held and approved that in order to get around that problem, what Emprise did was to say in substance we won't put it in our own name, we will use somebody else's to hide our interest, to mask our interest. So what they did was although they supplied the financing for it they gave the fellow a loan and they guaranteed him against loss on the loan and they gave him an indemnity against any loss in terms of the so-called "investment". They took one of the Jacobs' sons' father-in-law, I think the man's name was Troy, and they said "We are going to put this in your name and you will hold it for us and we will give you the money and you will make another deal with us whereby we get the fruits of it but you get something for your trouble too because you are a member of the family and you will get a certain percentage of it." This is what was done.

If I also recall correctly Louis Jacobs deceased was an unindicted co-conspirator in that case. I believe of the two Jacobs sons, either Jeremy or Max was an unindicted co-conspirator.

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2 MS. STRAUSS: Max.

3 MR. FRIEDMAN: About whom it was said when I
4 read the government's brief that he was guilty of four
5 plain or outright cases of instances of perjury during the
6 course of the trial but I will put that aside.

7 We are dealing here, as your Honor realizes,
8 with the question of whether or not things happened in
9 this family enterprise in certain ways, whether it was
10 uncommon or common, for example, for people to have
11 interest or for ownerships to be which weren't necessarily
12 reflected as a matter of record. What I want to show by
13 this, and nothing more, I am not going to show who their
14 associates were, whether nice guys or bad guys, clean or
15 dirty. I want to show where for their own corporate
16 purposes or family purposes they were perfectly content
17 to take something for which they were paying, or was theirs
18 and put it in somebody else's name and leave it that
19 way with full knowledge of all the facts but so far
20 as the world was concerned the world would see something
21 different. That's what I want from the Emprise conviction
22 and the conviction, if your Honor please, stands for that,
23 nothing more, nothing less.

24 MS. STRAUSS: Your Honor, as I said when I first
25 gave your Honor the opinion yesterday, the question as to

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whether or not the Jacobs' family or Interborough or Sportservice or even ultimately Emprise were defrauded in this case turns on whether or not they had knowledge of the facts of what was going on between Goldman and Zander.

I think it is no defense and probably highly prejudicial in the sense that it creates a great aura of confusing misconduct that would be hard to ferret out and explain. To bring in the fact that they were -- that Emprise and as a result primarily of the dealings way back in 1966 when Louis Jacobs who has since died and is not really in charge of the corporation for the overwhelming majority of the time we are interested in in this indictment, the fact that he was involved in circumstances that led to a conviction of this nature I would submit is just far too tangential and I think ultimately will have the effect and I wonder whether this isn't what was intended in the opening and even now, to try to show the jury that his is perhaps a bad corporation and that as a result of their being a bad corporation that the jury should feel it is not so bad to have defrauded them.

I think if that is the ultimate thing, which it is a hard thing to say that it wouldn't be, it is not really relevant evidence, evidence that is going to be properly

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2 before the jury in this case.

3 THE COURT:Of course, it is a two-edge sword.
4 If the jury believes that Mr. Goldman was involved with
5 this corporation and it is brought out that this corpor-
6 ation is a "bad corporation"or has connection with the Mafia,
7 et cetera, why isn't Mr. Goldman guilty just because he has
8 connections with the Mafia through this corporation?

9 MR. FRIEDMAN: I have to say thatwhen it comes
10 it comes. If I am the one who sponsored the thing by way
11 of urging your Honor to let it in, and if that happens to
12 be what pushes somebody into a view, I am going to say mea
13 culpa, mea maxima culpa but I don't do it unawares.

14 THE COURT: I am pointing it out to you.

15 MR. FRIEDMAN: I appreciate your doing so.
16 Nevertheless it seems to us, and we thought about it a good
17 deal, that the pertinence of the thing in the defendant's
18 defense outweighs any unwarranted interference that would
19 be drawn the other way about that particular conviction.

20 That is that particular act because he had
21 nothing to do with that at all. That has nothing to do
22 with him and nobody suggests to the contrary.

23 THE COURT: All right. Find out for right now --
24 I am reserving on both -- find out how long it will take to
25 get the certificate of incorporation and the minute books

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2 and the other corporate books and this guy's reimbursement
3 or whatever the heck it is --

4 MR. FRIEDMAN: Resolution with respect to the
5 safe deposit box to see who signed that, any corporate
6 books or record that pertain to Robrian wherever they may
7 be.

8 MS. STRAUSS: I will check with Mr. Zander
9 although I think he will tell me I now have everything
10 in his possession.

11 THE COURT: That she can do.

12 Or else--

13 MR. FRIEDMAN: You say you spoke to somebody
14 yesterday about getting some material. You didn't speak
15 to Mr. Zander, I take it, did you?

16 MS. STRAUSS: No, I did not.

17 MR. FRIEDMAN: There must be somebody else⁸
18 you have with a line into Sportservice.

19 THE COURT: I would assume so, yes.

20 MS. STRAUSS: I would also propose to talk to
21 Sportservice and ask what they have in their possession
22 of anything to try to get someone to bring that down on a
23 plane, send an agent up to get it and bring it back.

24 Is there any other route that you would suggest,
25 Mr. Friedman, as to how else you want us to pursue this?

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THE COURT: Find out if you can call Louis' office here and find out if they have them now.

MS. STRAUSS: Lefkowitz'?

THE COURT: Yes.

MR. FRIEDMAN: The certificate of incorporation.

THE COURT: They might have it right here on Worth Street.

MR. FRIEDMAN: In the County Clerk's office.

THE COURT: Find out and let me know.

(Continued on next page.)

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2 (In the robing room.)

3 THE COURT: How long will it take?

4 MS. STRAUSS: Mr. Lippe could go up to Albany.

5 He tells me it may be possible to get the information.

6 He says that it may be possible for the clerk with whom

7 he spoke to give the information as to the corporate

8 purpose on the certificate of incorporation over the phone.

9 But if he were to obtain the actual certifi-
10 cate he would have to go to Albany. He could take a plane.

11 MR. LIPPE: The minute book, I checked with
12 Sportservice. I asked for Almasi's present phone number
13 but they didn't have that either.

14 MS. STRAUSS: Mr. Almasi is no longer with the
15 company. He spoke with Mr. Kraus in the legal department,
16 who said, as he tells me, he recalls it, he recalls it was
17 not a Sportservice matter. They don't have any records
18 on it. You can ask to verify that and go back through
19 and actually check. His initial reaction is that they
20 didn't retain a minute book or other documents.

21 THE COURT: Do you know whether Zander has
22 it?

23 MS. STRAUSS: I asked Mr. Zander. He said
24 that everything he had he gave to me and he didn't remember
25 whether he ever saw a certificate of incorporation,

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2 whether he had ever had it but whatever he did have on it
3 he had brought down to New York.

4 THE COURT: Did you call the bank in Buffalo,
5 with respect to the safe deposit boxes?

6 MR.FRIEDMAN: It is in New York. It is a
7 bank in New York. It is not a Buffalo bank.

8 MS. STRAUSS: I will have to ask Mr. Zander
9 about that bank and see if they have it.

10 THE COURT: I think you ought to.

11 MS. STRAUSS: Does your Honor want us to
12 proceed to have Mr. Lippe fly to Albany to get the certifi-
13 cate of incorporation?

14 THE COURT: I wanted somebody to do that, yes.

15 MS. STRAUSS: We will do that now.

16 THE COURT: You might get it from the bank.

17 MS. STRAUSS: The certificate of incorporation.

18 THE COURT: They might have it. They are
19 sticklers, they might.

20 MR. FRIEDMAN: If I may say, Judge, and I am
21 just trying to recall what I saw in that file that I looked
22 at. There were other names on that file besides Almasi.
23 There was the Chasen name, which is the sister of Zander.
24 There is a man or two men, I believe who signed corporate
25 tax returns, Wellington Lockwood I think is one name.

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2 And Chasen was the sister's name. There was an attorney
3 I believe at the 703 Main Street address named Weinstein.
4 There were a group of names, Judge, all Sportservice
5 officers or employees. I do note, if I understand what
6 Miss Strauss is saying, she is saying that that folder
7 came from Zander.

8 MS. STRAUSS: Yes.

9 MR. FRIEDMAN: You also represent that Zander
10 said that this is his file or his papers, if I understand
11 correctly.

12 MS. STRAUSS: He told me he had it. He ha
13 at home certain documents and he would bring them to
14 me.

15 MR. FRIEDMAN: I also think that some of the
16 tax retrurns in the folder are Xeroxed or other types of
17 reproduced copies and that it may be suggestive of the
18 fact that there were other copies retained, as preparers
19 usually do.

20 THE COURT: Wellington Lockwood. Daniel Wein-
21 stein, 703 Main Street, Buffalo, New York, M. Lockwood,
22 accountant, who is he?

23 MS. STRAUSS: I don't know, Judge. I assume that
24 he is with Sportservice. It is a Buffalo address. Maybe
25 he is a personal accountant or a corporate accountant.

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1
2 THE COURT: Weinstein, Esquire. Weinstein,
3 Esquire. Are you sure that this is a New York --

4 MR. FRIEDMAN: It is a New York safety deposit
5 box, New York City. I am not sure, if you ask me for a
6 fact, but that's what I believe he said in his testimony.
7 I believe you are now having it confirmed by Ms. Strauss.

8 THE COURT: Do you have enough to do for
9 a half hour without that stuff?

10 MR. FRIEDMAN: Without going into this,
11 I will do something on it.

12 THE COURT: You can do with this if you
13 want to.

14 MR. FRIEDMAN: May I?

15 THE COURT: Yes. Absolutely. I still feel
16 that you are entitled to get the certificate of incorpor-
17 ation.

18 MR. FRIEDMAN: Judge, you won't find me disagree-
19 ing with that. You will not only get it, but you would
20 get it a long time ago.

21 MR. LIPPE: The First National City Bank,
22 8th Avenue and 15th Street.

23 THE COURT: Call them up.

24 (In open court.)

25 (The jury enters the courtroom.)

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2 THE COURT: Ladies and gentlemen, my apologies.
3 We had as I told you problems of law and logistics which
4 come up during a case. This was a problem of mixed law
5 and logistics.

6 (Mr. Zander takes the stand.)

7 CROSS EXAMINATION (Continued)

8 BY MR. FRIEDMAN:

9 Q Mr. Zander, I am going to hand you a folder,
10 portions of which have been separately marked by the
11 clerk with exhibit numbers. I don't believe he has
12 had an opportunity to finish them all. My question to
13 you is, would you please look at the folder and at the
14 contents and I will ask you a question.

15 THE COURT: These are marked as Defendant's
16 Exhibit A?

17 MR. FRIEDMAN: Yes, Judge. Each piece inside
18 will be marked with a separate sub-number. That
19 hasn't been completed yet.

20 THE COURT: All right.

21 (At the side bar.)

22 THE COURT: The client looks like he is
23 about to have a heart attack.

24 MR. FRIEDMAN: It's one of those things,
25 Judge. The man I think is taking medication. I didn't

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get a chance to see him.

THE COURT: That's why I asked you up here.

MR. FRIEDMAN: He hasn't said anything to me, Judge. He is a human being.

THE COURT: You know, I have a feeling that he thought I was being a wise guy when I said I didn't want to try a half a dead man. I meant it then. I don't want to kill the guy.

MR. FRIEDMAN: I am not arguing anything with you, Judge. I go and do my work as you understand I do.

THE COURT: That's what you are supposed to do.

MR. FRIEDMAN: When you originally said it was last September to Schwartz and myself, go get a doctor and agree on a doctor and there was a doctor that we both agreed on, that dr. came in, Judge, and told you that this man should not stand trial. I didn't know then the doctor. I had not talked to that doctor, Goldman hadn't seen that doctor. By the other fellow's concession he was the grand daddy of all cardiologists in substance.

Unless somebody would say that you would regard the man as a fake or something like that, there is some

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2 substance as to the history of his operation.

3 THE COURT: I am not suggesting that there
4 is not.

5 MR. FRIEDMAN: I am saying that we have to
6 be here because your Honor said we have to be here.

7 THE COURT: I understand that. If the guy
8 is feeling ill today then my advice is why don't you
9 just ask him if he is feeling ill and up to going
10 ahead.

11 MR. FRIEDMAN: I will ask him, your Honor.

12 THE COURT: If he is not, then I will be
13 reasonable.

14 MR. FRIEDMAN: The Court does what it thinks
15 it has to do. That is your job and I have mine.

16 THE COURT: Still ask him and find out
17 what the story is.

18 MR. FRIEDMAN: I don't want to ask him in
19 front of the jury and I don't want to go over to him now.
20 If your Honor wants to take a break now, we can do it.
21 I hesitate to do it.

22 THE COURT: Just do it.

23 (Pause.)

24 MR. FRIEDMAN: He says he feels all right.
25 I don't believe him. He says "I want to continue."

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2 I can't do anything about that.

3 THE COURT: I can't either.

4 (In open court.)

5 THE COURT: Go ahead, Mr. Friedman.

6 BY MR. FRIEDMAN:

7 Q Mr. Zander, have you had a chance to look at
8 that folder?

9 A Yes.

10 Q Do you recognize it and its contents?

11 A Yes.

12 Q Is this material which you had in your
13 possession recently?

14 A Yes.

15 Q Did you have this file and its contents at
16 some particular place in your possession?

17 A I had it in my home.

18 Q For how long has that file been in your home,
19 roughly?

20 A (No response.)

21 Q I will rephrase it for you. When you
22 left Sportservice in 1975, November, did you clear your
23 desk out?

24 A Yes.

25 Q Did you take all your possessions with you?

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2 A Yes.

3 Q Then you took them home, right?

4 A Yes.

5 Q Is this one of the things that you took
6 from Sportservice to your home when you cleaned out your
7 desk?

8 A No.

9 Q This had been there at your home before?

10 A Always at my home.

11 Q Always at your home. All right.

12 Q When did you deliver that for the first time to
13 anybody connected with the Federal government?

14 A Two or three weeks ago.

15 Q Two or three?

16 A Weeks ago.

17 Q Weeks ago.

18 When did you for the first time tell anybody
19 employed by the Federal government that such a file or
20 any portion thereof existed?

21 A Two or three weeks ago.

22 Q Had you at any point earlier than that told
23 Mr. Hollman that such a file existed?

24 A I don't recall.

25 Q All right.

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2 All of these papers are papers which you
3 received or had and have maintained for several years,
4 is that right?

5 A Yes.

6 Q They all pertain to this Robrian Corporation,
7 is that right?

8 A Yes.

9 Q May I have it, please?

10 A Yes.

11 MR. FRIEDMAN: If your Honor please, I offer
12 the file in evidence.

13 MS. STRAUSS: Your Honor, I would just like
14 to take down the exhibit numbers.

15 THE COURT: Do you object to it?

16 MS. STRAUSS: No.

17 THE COURT: That will be marked in evidence.

18 (Defendant's Exhibits A-1 through A-16 were
19 received in evidence.)

20 BY MR. FRIEDMAN:

21 Q Is there a man that you know, Mr. Zander,
22 whose name is Wellington Lockwood?

23 A Yes.

24 Q Who is Wellington Lockwood?

25 Q He is the controller and tax adviser from

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2 Sportservice.

3 Q Was he the controller and tax adviser of Sport-
4 service at the time you formed Robrian Corporation?

5 A I believe so.

6 Q Did you ask for his assistance in connection
7 with the affairs of Robrain?

8 A For the filing of a tax return.

9 Q This corporation which you formed using the
10 first name of your two children just like Jola, Joy and
11 Laurie, you understood Jola is Jov and Laurie?

12 A I since knew that. I don't know if I knew
13 that at the time.

14 Q This corporation that you formed as a
15 vehicle to steal as you say from your employer, you
16 went and asked the controller and tax expert in the employ
17 of your employer to help you do the tax returns, is that
18 right?

19 A They were not aware of what the corporation
20 was formed.

21 MR. FRIEDMAN: If your Honor please,
22 I move that the answer be stricken.

23 THE COURT: Yes. It will be stricken.

24 MR. FRIEDMAN: May we have the question read?

25 (Record read.)

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2 A Yes.

3 Q When you went to see Mr. Lockwood he was an of-
4 ficer of the corporation, wasn't he?

5 A I believe he was.

6 Q He was the tax expert?

7 A Yes.

8 Q Did you say to him what it was that this
9 corporation Pobrains was for?

10 A No.

11 Q Did you tell him that it was a personal
12 venture of yours that had nothing to do with company af-
13 fairs?

14 A No.

15 Q Did he say to you, "Look, Mr. Zan, I am here,
16 I am being paid money as a salary by a company and you come
17 to me with something that you want me to take time to do,
18 is this company business?"; did he ask you that?

19 A May I state what I told him?

20 Q Please answer my question.

21 A What is your question?

22 MR. FRIEDMAN: May we have the reporter repeat
23 it, your Honor.

24 THE COURT: Yes.

25 (Record read.)

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2 A No.

3 Q You neither told him what it was and he didn't
4 ask, right?

5 A Yes.

6 All right.

7 He saw the name of the company, right?

8 A Yes.

9 Q This man, Mr. Lockwood, is he an honest man?

10 A Yes.

11 Q A responsible man?

12 A Yes.

13 Q Is he a CPA?

14 A I am not sure.

15 Q Is he a lawyer?

16 A No.

17 Q Before he could file an income tax return didn't
18 he have to find out from you some information?

19 A Yes.

20 Q Did he tell you what he needed to know?

21 A Yes.

22 Q Did he ask you what the company's business
23 was so that that could be taken into account in the preparatio
24 of the return?

25 A I don't remember what questions he asked.

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2 Q Did he ask you about the issuance of stock in
3 the company?

4 A I don't remember what questions he asked.

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2 Q All right.

3 I ask you about another name. M. -- I will change
4 that. Daniel J. Weinstein. Do you know a man by that name?

5 A I don't remember that man or the name. He would
6 be a part time employee, a part time attorney or
7 trainee attorney working under Almasi, Mr. Almasi.

8 Q Anyway, Daniel J. Weinstein has his name on
9 a piece of paper that is in your file that you have had
10 for several years and it shows him as the person who
11 filed a certification of dissolution of your Robrian
12 Corporation, does that happen to refresh your recollection
13 about for certain who he is or was?

14 A He was a part time attorney or would be attorney,
15 I don't know which, that worked for Sportservice. I believe
16 he drew that letter at the direction of Mr. Almasi.

17 Q Did you at some point go to Almasi and say,
18 look, I have this Robrian Corporation, I want it now
19 dissolved, is that what happened?

20 A That is correct.

21 Q Did Almasi say wait a minute, what is this
22 dissolved, whose company is Robrian, it sounds like the
23 names of your children?

24 A He didn't say anything like that.

25 Q He never knew that that was the makeup of the name?

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2 A I don't believe he knew the name of my children,
3 I am not sure.

4 Q Let's go back a little bit. When you first
5 formed this corporation you talked to who, what lawyer
6 helped you?

7 A Mr. Almasi.

8 Q One of the fun parts of forming a corporation
9 is the picking of the name sometime. Did you and Mr.
10 Almasi discuss picking a name?

11 A No. I picked the name.

12 Q Even before you talked to Almasi?

13 A Yes.

14 Q You picked the name of your two children?

15 A Yes.

16 Q You gave that to Almasi?

17 A Yes.

18 Q Did the company ever have a checking account?

19 A No.

20 Q It had some expenses. Who paid the expenses?

21 A I did.

22 Q With your personal checks?

23 A Yes.

24 Q This was the vehicle that you were going to use
25 to take money from Jola, right?

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J. Zander-cross

2 A Yes.

3 Q Were you going to pay taxes on the money?

4 A Yes.

5 Q I want you to be very sure about the answer to
6 that question. As you thought about this scheme that you
7 have described at the point where you got money if it
8 came to pass from Jola as a share of Jola's profits,
9 did you plan if you used this corporation to declare
10 and pay taxes on the money?

11 A Yes.

12 Q Who were the officers of this corporation?

13 A I believe myself and Mr. Almasi.

14 Q Anybody else?

15 A I don't remember.

16 Q Your sister, perhaps?

17 A She could have been made an officer. I don't
18 recall.

19 Q I want to show you the document marked A-14.

20 A Yes.

21 Q I want to ask you whether that refreshes your
22 recollection as to who the owners and who the directors
23 of Robrian were?

24 A The officers were myself and Mr. Almasi.

25 Q Who were the directors?

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2 A The directors were myself, Mr. Almasi and Ms.
3 Doris Chasen.

4 Q Your sister?

5 A Yes.

6 Q Mr. Lockwood was going to take care of the
7 accounting for you, right?

8 A Yes.

9 Q He was going to be in effect Robrian's accountant,
10 right?

11 A No.

12 Q He was going to be an accountant enough to be
13 able without getting himself in trouble with the federal
14 government to prepare and file a tax return for the company,
15 right?

16 A He was going to file a tax return for the company,
17 yes.

18 Q In other words, to do that and to sign his name
19 as a preparer he has to satisfy himself that the content
20 of the thing is something which is legitimate, right?

21 A Yes.

22 Q You knew that?

23 A Yes.

24 Q You intended, you say, to pay taxes on whatever
25 money was received in this corporation, right?

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2 A Yes.

3 Q Therefore, at the time that you formed this
4 corporation you were prepared to tell Lockwood or anybody
5 else who was a corporate officer what the source of the
6 monies received by this corporation were, right?

7 A No.

8 Q Were you going to tell them a lie?

9 A No.

10 Q Well, let's see now. If you carried it forward
11 as you thought about it, as you planned there was going
12 to be money that this corporation Robrian was going to
13 receive from Jola as a share of profits, right?

14 A Yes.

15 Q You say that this corporation was going to report
16 its income honestly?

17 A Yes.

18 Q And pay taxes?

19 A Yes.

20 Q And therefore its income would consist of payments
21 from Jola, right?

22 A Yes.

23 Q That would be its income?

24 A Yes.

25 Q Your accountant and tax preparer would have

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2 to know that, wouldn't he?

3 A Yes.

4 Q He would have to know because anybody would
5 ask you who was preparing a tax return, on what account
6 is this could Robrian receiving money from a company called
7 Jola with whom incidentally, Interborough does business?

8 A I would not have used Mr. Lockwood if the company
9 had become active.

10 Q You would have gotten somebody else?

11 A Yes.

12 Q You would have removed the officers who were
13 there and changed officers, too, would you?

14 A I don't know if I would have changed. I don't
15 know. I hadn't planned that far ahead.

16 Q I see. If Mr. Lockwood had asked you, you would
17 have lied to him, right?

18 MS. STRAUSS: Your Honor, we have had quite a
19 few hypotheticals and calling for speculation. The
20 witness should be saying what he might have done. We
21 object.

22 THE COURT: I will let it go in.

23 BY MR. FRIEDMAN:

24 Q If Mr. Lockwood had asked you about the source
25 of income from this company, you would have lied to him?

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2 A It would never have come up.

3 Q I didn't ask you that. I asked you if Mr. Lockwood
4 as the preparer of this company's tax returns and he did
5 actually prepare them, didn't he?

6 A Yes.

7 Q If he had asked you at some point in time the
8 source of the company's income and that income had come
9 from Jola, would you have lied to him?

10 A I can't answer that question.

11 Q Let me ask you something else, Mr. Zander.

12 If I remember your testimony on direct examination,
13 you said that one of the other steps that you got to as
14 you put this contemplation of yours into effect was that
15 you got a safe deposit box, right?

16 A Yes.

17 Q I assume, Mr. Zander, since the business -- with-
18 drawn.

19 Where was the company going to conduct its
20 business?

21 A Which company?

22 Q Robrian.

23 A In New York.

24 Q New York State?

25 A New York State.

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2 Q New York State.

3 I take it since you regarded this as a private
4 matter, personal matter to you --

5 A Yes.

6 Q -- you were going to work it or have it operate
7 out of your home in Buffalo, right?

8 A No.

9 Q Where were you going to have it operate from?

10 A Out of New York City.

11 Q New York City?

12 A Yes.

13 Q Was there something about the nature of the
14 business that you thought this company was going to do
15 that brought it to New York City?

16 A I knew that if it had involved Jola it would be
17 something that was dishonest and I wanted to keep it
18 secret so therefore for that reason that anything
19 connected with it I wanted to keep separate and apart
20 from Buffalo, that is why I opened the safe deposit
21 box in New York.

22 Q You didn't want to leave any tracks around whereby
23 anybody could see that you had a safety deposit box
24 for this company in New York, right?

25 A Yes.

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2 Q Because if anybody at Sportservice had seen
3 that, that would immediately have excited suspicion,
4 right?

5 A Not initially, only if I had used it for Jola
6 Enterprises.

7 Q How would they know what you did with the safe
8 deposit box, how would they know what you put into it?

9 A I just wanted to keep it separate and apart,
10 that was my thinking.

11 Q You didn't want anybody in Buffalo to know that
12 you had in this corporation a safe deposit box in New York
13 City, right?

14 A Yes.

15 Q All right.

16 When you opened a safe deposit box, Mr. Zander,
17 by reason of your 30 years of experience or more, you
18 have to get some corporate resolutions, right?

19 A I didn't know. Whatever I had to get Mr. Almasi
20 told me what I had to get.

21 Q Did you tell Mr. Almasi, look, one of the things
22 I plan for my Robrian Corporation is a safe deposit
23 box in New York City?

24 A Yes.

25 Q So Almasi knew and he was a corporate officer

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J. Zander-cross

2 that you were going to have a safe deposit box in New York
3 City?

4 A Yes.

5 Q I thought that you said to me a moment ago that
6 you didn't want anybody in Buffalo to know that?

7 A I didn't want anybody in Buffalo to know that,
8 that I had eventually used it for improper uses.

9 Q Mr. Zander, you could have had a safety deposit
10 box in Buffalo and as long as nobody knew what you were
11 putting into it, it would make no difference, would it?

12 A I don't know. At the time that was my thinking.

13 Q Now I ask you another question, Mr. Zander.
14 Why a safety deposit box?

15 A Just for safekeeping of a record.

16 Q Safekeeping of what?

17 A Safekeeping of the record.

18 Q The record? What record?

19 A The record of the corporation.

20 Q Mr. Zander, those records that you have that
21 were identified as Exhibit A, were they in the safety
22 deposit box?

23 A Yes.

24 Q Until when?

25 A Until I discontinued it.

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2 Q 1970?

3 A Until I discontinued the box.

4 Q Yes. But when you set it up did you have any
5 contemplation, Mr. Zander, about cash?

6 A No. You mean to put in the box?

7 Q Yes.

8 A No.

9 Q Nothing to do with that?

10 A No.

11 Q There is something in your experience that says
12 you couldn't have gotten a safe deposit box in the
13 corporate name in Buffalo in which to put corporate records?

14 A I knew I could have but I chose to do it in
15 New York.

16 Q What reason?

17 A At the time I just was connecting Jola with the
18 box and I put it in New York. I knew that I would be going
19 to New York in a frequent occasion. It was very convenient.

20 Q I want to show you Exhibit A-12.

21 MS. STRAUSS: May I see that?

22 MR. FRIEDMAN: Yes.

23 (Pause.)

24 MR. FRIEDMAN: May I stand alongside the
25 witness, Judge?

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2 THE COURT: Yes.

3 Q Would you take a look at that document or
4 documents?

5 A Yes.

6 Q That is the document which Mr. Weinstein, Esq.
7 is using the address 703 Main Street, at Tupper, Buffalo,
8 New York, wrote to the Corporation Tax Bureau of the
9 State of New York on July 20, 1970, is that correct?

10 A Yes.

11 Q The first sentence and it is Re: Robrian
12 Corporation, the first sentence is, "Enclosed please find
13 form CT-4 and our remittance of \$100 for our 1970 New York
14 State Corporation Franchise Tax."

15 My question to you, Mr. Zander, is, whose check
16 went with that?

17 A That would have been my check.

18 Q You said you now have a living recollection of
19 that, a personal check of yours?

20 A No. It could have been more probably a bank
21 check, the kind, if it is under a certain amount it
22 is called a money order, I believe.

23 Q Do you remember asking Mr. Weinstein to make
24 this letter and file this return for you?

25 A I don't specifically remember, but that refreshes

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2 my memory.

3 Q Excuse me?

4 A In other words, based upon that letter I either
5 was referred to him by Mr. Almasi or Mr. Weinstein -- I will
6 go back. I don't recall whether I asked Mr. Weinstein
7 to prepare the letter as a result of Mr. Almasi telling
8 me to or whether I merely went to Mr. Almasi and then
9 he in turn had Mr. Weinstein do it.'

10 Q Assuming that your belief that this was done by
11 a bank check or something of that sort, where you walk
12 into the bank and they give you money and they give you
13 a check payable to the order of some designated payee,
14 did Mr. Weinstein say hey, how come we are using a check
15 like that to pay something. We always pay our bills
16 around here with Sportservice checks.

17 A He didn't make any such inquiry.

18 Q You didn't tell him anything about why if your
19 belief is correct that strange mode of payment was used,
20 is that correct?

21 A That is correct.

22 Q All right.

23 MR. FRIEDMAN: Judge --

24 THE COURT: Tell me what is located or what was
25 located at the time at 703 Main Street, Tupper?

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2 THE WITNESS: That was their main offices.

3 THE COURT: Whose main offices?

4 THE WITNESS: The offices of Sportservice.

5 Q The entire building was occupied by business
6 employees working for Sportservice?

7 A No.

8 Q Tell me?

9 A They had tenants downstairs. There were retail
10 stores.

11 Q Retail stores on the first floor?

12 A Yes.

13 Q The building was owned by Sportservice or an
14 affiliated company, and the floors above the first floor
15 were they occupied by Sportservice?

16 A Yes.

17 Q How tall a building was it?

18 A Two floors.

19 Q The first floor was retail stores and all the
20 rest of the space in this building was used by Sportservice?

21 A Right.

22 Q That is the letterhead on which this Exhibit
23 A-12 went out, 703 Main Street, at Tupper, Buffalo, New
24 York?

25 A That is correct.

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2 Q The headquarters of Sportservice?

3 A Yes.

4 MR. FRIEDMAN: Judge, may we show it to the jury?

5 THE COURT: Sure.

6 MR. FRIEDMAN: I will pass it around at a different
7 time. I think I have come to a point where I will break it.

8 THE COURT: All right. I did promise you for
9 example that you would get out to lunch at 12:30. It is
10 12:30, have a good lunch.

11 (Jury excused.)

12 THE COURT: You may step down, Mr. Zander.

13 I don't think this has to be on the record.

14 (Discussion off the record.)

15 (Luncheon recess.)

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2 AFTERNOON SESSION

3 2:15 p.m.

4 (Robing room conference.)

5 THE COURT: Do we have any news on the documents?

6 MS. STRAUSS: Yes, your Honor, the First
7 National City Bank was contacted over lunch and we obtained
8 from them a copy of the corporate resolutions and the
9 card indicating that they had a safe deposit box and
10 signatures on it. I gave it to Mr. Friedman at which point
11 he said to me that having seen the surrender date, August
12 1975, we also need an access card.

13 We then had the agent call Citibank back again
14 and they said they have no access card. What they do is
15 simply have the individual sign his name and they
16 don't keep records of dates of access. However, we have
17 sent the agent back up with a subpoena requesting the
18 access card and asking if they don't have it to please
19 explain what their procedure is in writing so we can have
20 some record of that.

21 With respect to the certificate of incorporation
22 we have an agent right now on his way to Albany and the
23 Secretary of State up in Albany has the documents ready
24 to turn over to the IRS agent. We expect to have that
25 in court the first thing tomorrow morning.

